

Attachments 2 - 8 OCLC NetLibrary

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Attachment 2 OCLC NetLibrary Usage Statistics

Tab 1 Usage Statistics Report

Tab 2 Usage Statistics Analysis

Usage results and trends are important aspects of collection management. Usage statistics for all titles, regardless of program, are available in our secure, online Library Resource Center. OCLC will send MSL usage statistics reports quarterly. These reports will include usage per library per month and will identify libraries that may need additional assistance to increase usage. We have performed similar analyses for other groups and understand the key factors that drive eAudiobook usage.

In the sample usage report and analysis in this Attachment, each library's population was identified to provide a common basis for comparison.

Tab 1 Usage Statistics Report

NetLibrary usage statistics are available online from our secure, subscribers-only web site. Data are available at both the library and group level. The MSL NetLibrary Administrator will be able to access participants' statistics at both the group and individual library level. Each participating library's NetLibrary Administrator can access statistics only for his or her library. Date ranges may be set as desired by the library staffer running the report.

**State Library
NetLibrary eAudiobook Usage Report**

Usage Interval: 7/1/2006 - 3/05/2007

March 2007

Client	Total Population	Total as of Oct-06 Interval: 7/1/2006 - 10/31/2006	Total as of March-07 Interval: 7/1/2006 - 3/05/2007	Annualized Usage based on second 4 months	Annualized Usage based on second 4 months with MARCs loaded	MARC Records Loaded	Annualized ratio of Access based on Pop	Annualized Access based on Pop
Public Library 1	725,520.00	163.00	554.00	1,173.00	1,173.00	•	0.00	1,173.00
Public Library 2	239,459.00	949.00	3,243.00	6,882.00	6,882.00	•	0.03	6,882.00
Public Library 3	89,713.00	958.00	1,662.00	2,112.00	2,112.00	•	0.02	2,112.00
Public Library 4	113,459.00	389.00	1,454.00	3,195.00	3,195.00	•	0.03	3,195.00
Public Library 5	118,885.00	161.00	579.00	1,254.00	1,254.00	•	0.01	1,254.00
Public Library 6	47,357.00	409.00	951.00	1,626.00	1,626.00	•	0.03	1,626.00
Public Library 7	26,995.00	239.00	639.00	1,200.00	1,200.00	•	0.04	1,200.00
Public Library 8	44,555.00	161.00	369.00	624.00	624.00	•	0.01	624.00
Public Library 9	26,935.00	12.00	16.00	12.00	718.92	•	0.03	718.92
Public Library 10	18,355.00	141.00	423.00	846.00	846.00	•	0.05	846.00
Public Library 11	23,983.00	171.00	924.00	2,259.00	2,259.00	•	0.09	2,259.00
Public Library 12	210,749.00	79.00	183.00	312.00	5,625.06		0.03	5,625.06
Public Library 13	25,309.00	250.00	588.00	1,014.00	675.52		0.03	675.52
Public Library 14	29,376.00	61.00	224.00	489.00	784.07		0.03	784.07
Public Library 15	26,606.00	214.00	604.00	1,170.00	710.14		0.03	710.14
Public Library 16	21,372.00	11.00	123.00	336.00	570.44		0.03	570.44
Public Library 17	22,942.00	1.00	3.00	6.00	612.34		0.03	612.34
Public Library 18	12,938.00	22.00	391.00	1,107.00	345.33		0.03	345.33
Public Library 19	31,730.00	135.00	313.00	534.00	846.90		0.03	846.90
Public Library 20	9,580.00	4.00	23.00	57.00	255.70		0.03	255.70
Public Library 21	16,442.00	50.00	162.00	336.00	438.85		0.03	438.85
Public Library 22	8,743.00	56.00	161.00	315.00	233.36		0.03	233.36
Public Library 23	15,354.00	1.00	5.00	12.00	409.81		0.03	409.81
Public Library 24	10,711.00	9.00	52.00	129.00	285.89		0.03	285.89
Public Library 25	16,706.00	4.00	37.00	99.00	445.90		0.03	445.90
Public Library 26	7,906.00	0.00	2.00	6.00	211.02		0.03	211.02
Public Library 27	2,703.00	11.00	20.00	27.00	72.15		0.03	72.15
Public Library 28	18,974.00	12.00	92.00	240.00	506.43		0.03	506.43
Public Library 29		1.00	54.00	159.00	159.00			13,747.80
Public Library 30		39.00	123.00	252.00	252.00	•		
Public Library 31				0.00				
Public Library 32		26.00	104.00	234.00	234.00			
Public Library 33		38.00	191.00	459.00	459.00			
Public Library 34				0.00	0.00			
Public Library 35		3.00	3.00	3.00	3.00			
Public Library 36		77.00	148.00	213.00	213.00			
Public Library 37		476.00	986.00	1,530.00	1,530.00	•		
Public Library 38		0.00	34.00	102.00	102.00			
Public Library 39		26.00	131.00	315.00	315.00			
Public Library 40		14.00	131.00	351.00	351.00			
Public Library 41		5.00	45.00	120.00	120.00			
Public Library 42				0.00	0.00			
Public Library 43		8.00	33.00	75.00	75.00			
Public Library 44				0.00	0.00			
Public Library 45		17.00	76.00	177.00	177.00			
Public Library 46		28.00	199.00	513.00	513.00			
Public Library 47				0.00	0.00			
Public Library 48				0.00	0.00			
Public Library 49		21.00	46.00	75.00	75.00			
Public Library 50		2.00	7.00	15.00	15.00			
Public Library 51		0.00	6.00	18.00	18.00			
Public Library 52		25.00	74.00	147.00	147.00			
Public Library 53		6.00	90.00	252.00	252.00			
Public Library 54		3.00	11.00	24.00	24.00			
Public Library 55				0.00	0.00			
Public Library 56		9.00	45.00	108.00	108.00			
Public Library 57				0.00				
Public Library 58				0.00				
Public Library 59				0.00				
Public Library 60				0.00				

**State Library
NetLibrary eAudiobook Usage Report**

Usage Interval: 7/1/2006 - 3/05/2007

March 2007

Client	Total Population	Total as of Oct-06 Interval: 7/1/2006 - 10/31/2006	Total as of March-07 Interval: 7/1/2006 - 3/05/2007	Annualized Usage based on second 4 months	Annualized Usage based on second 4 months with MARCs loaded	MARC Records Loaded	Annualized ratio of Access based on Pop	Annualized Access based on Pop
Public Library 61				0.00				
Public Library 62				0.00				
Public Library 63		1.00	22.00	63.00	63.00			
Public Library 64		0.00		0.00				
Public Library 65				0.00				
Public Library 66				0.00				
Public Library 67		201.00	533.00	996.00	996.00			
	Grand Total	5,699.00	16,889.00	33,573.00	41,119.80	13.00		
KEY:								

Opportunity (Those 17 that need to load MARCs)

% of those who have not loaded MARCs	0.39
Annualized Total of 18 lib without MARCs	6,189.00
% increase in access if 18 lib loaded MARCs	1.22
Annualized rate for those loading MARCs based on Pop	0.03
Opportunity	7,546.80

- Source of data
 - NetLibrary eAudiobook usage
 - Population data obtained from State Library
 - Libraries that loaded MARCs obtained from State Library
- For interpretation of report see the accompanied:
"Usage Analysis example.doc"

Tab 2 Usage Statistics Analysis

This analysis compared usage for libraries that had and had not loaded MARC records. Usage statistics can also be analyzed relative to other factors, such as completion of training, establishing remote-patron authentication, and implementation of marketing activities.

Background:

- **Group Size: 71 Libraries**
- **Subscription Cost: \$xxx**
- **eAudiobook Collections:**
 - eAudioEssentials Collection
 - eAudiobooks CEV Holy Bible
 - eAudiobooks Pimsleur Language Series
 - eAudiobooks US & Canada Core Collection
- **Live Date: July 1, 2006**
- **John Doe actively involved as Group Implementation Manager**
- **Considers 1st year as Pilot**

Activities to Date:

- **Provided content** for John Doe to create State Library website NetLibrary FAQ and Essential Resources – July 2006
- **Accounts created and group went live** – July 2006
- **Recommended a local MARC delivery solution;** State Library website created for group libraries to obtain their MARCs – August 2006
- **Recommended a central RPA method** for all group libraries to direct patrons to; John created one RPA site for all libraries on State Library website – August 2006
- **Conducted On-Site Training** – October 2006:
 - 4 eAudiobook training sessions
 - 2 Marketing workshop sessions
 - 23 libraries attended training
- **Conducted First Usage Analysis** – December 2006:
 - Usage Analysis showed total of 5699 accesses
 - 19 libraries targeted for follow up survey conducted by RSP (*9 of 19 had Service Check completed*)
- **Conducted Second Usage Analysis** – March 2007
 - Usage Analysis showed total of 16,889 accesses
 - 17 libraries targeted to assist loading MARC records
 - 14+ libraries targeted for further training
 - 9 libraries targeted for Marketing Web-Workshop
- **Provided Second Level Support** – Ongoing

Targeted Survey Results:

- **Created open ended questions for follow-up survey** conducted by RSP – March 2007
- **8 out of 10 surveys were completed**
- When asked, "Have you loaded the NetLibrary eAudiobook MARC records?" the following libraries responded:

"No. We are waiting to see what will happen with the State Library purchase and if this program will be funded next year."
Public Library 1 – Jane

"No. This product is not a high priority for our library. Because this product is being funded by the State Library, we are not sure if it will be renewed for next year. Due to this we have not loaded the MARC records into our catalog."
Public Library 2 – Ronald

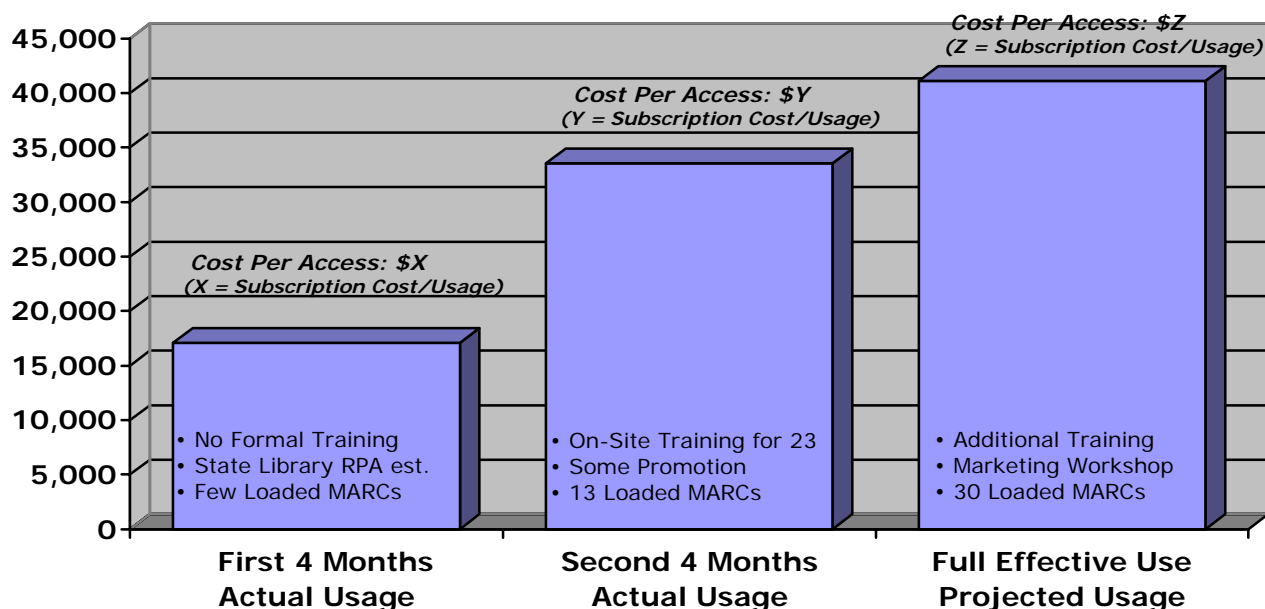
"No. We do not currently have an online catalog."
Public Library 3 – Cathy

Recommended Future Actions:

- **Recommended John assist 18 targeted libraries with loading MARC records** based on usage analysis and survey results
- **Conduct additional training sessions** for the 14 targeted libraries and others that did not attend previous training sessions:
 - Two Sessions: "eAudiobook Overview *Audience: Librarians - how to use NL eABs" scheduled – April 17th 2007
- **Encourage better promotion** (website & on-site promo)
 - One Session: "Marketing Web-Workshop *with successful peer librarians sharing what works" scheduled – April 24th 2007
- **Conduct Year-End Analysis** – July 2007

Results:

■ Annualized Accesses



Attachment 3 OCLC NetLibrary Library Resource Center

How it works: Library Resource Center

The **Library Resource Center (LRC)** at www.netlibrary.org/resourcecenter is where you can administer and manage your library's NetLibrary account. In the LRC, you can manage user accounts, view current authentication information on file for your library and run real-time usage reports for all your NetLibrary eBook and Downloadable eAudiobook activity—for both unique and shared collections.

How to log in

To log in to the Library Resource Center (LRC), your username must have the proper security token. Typically the administrator of your library's account has access to the LRC. If you would like to gain access, check with the NetLibrary administrator at your library or contact OCLC support at support@oclc.org.

Go to www.netlibrary.org/resourcecenter and login with your NetLibrary username and password.

Reports

The Reports section provides access to usage data. Sample reports are described below.

Popular Titles: List of all titles accessed and the number of times each title was accessed during the selected time period, organized from most used to least used.

Activity by Title: List of all titles and the number of times each title was accessed during the selected time period, organized alphabetically by title.

Turnaway Statistics: Displays attempts to view titles where all copies were in use or the title was not owned by the library.

You may specify the parameters to run a usage report: the activity, the Content type, the collection(s) and the member(s). Follow the steps at right to run a usage report.

How to run a usage report

Select the appropriate parameters, below:

1. **Activity Interval:** Select a time period for which you wish to run the report. You may select a specific time period such as a week or a month, or the lifetime of the account.
2. **Content Type:** If your library has access to more than one type of eContent (eBooks, eAudiobooks, etc.), select the type of content for which you want to run the report.
3. **Collection:** Select your collection(s). You may select a single collection, multiple collections or all the collections to which your library has access. Click on a collection in the left box, and then click the "Add" button located in-between the two boxes.
4. **Member(s) whose usage you want to view:** Select the member whose usage you wish to view (typically your library's name), by clicking on the name in the left box and then click the "Add" button located in-between the two boxes.
5. Click "**Submit**" and your report will display. Sort your report by clicking on any of the column headings.
6. **Export** your report in a tab-delimited format to view in spreadsheet or database applications such as Excel.

Learn how to read a report, continued →

How to read a NetLibrary usage report

There are multiple reports you can run to monitor your overall NetLibrary usage. Popular reports include Activity by Title, Activity by Subject and Turn-Away Statistics. A typical report will contain columns for information such as:

- Accesses
- Turnaways
- Title
- Subject
- LCC or Dewey classification
- Authors
- Publisher
- ISBN
- Year published

In addition to Usage Reports, you can also run Collection Development reports to display information such as owned content or new titles added recently to NetLibrary.

How to read an eAudiobook-specific report

An eAudiobooks report lets you monitor trends in checkouts and renewals on a title and collection level. An eAudiobook report contains two additional usage columns:

- Checkouts
- Renewals

Checkouts plus renewals equal the accesses for an eAudiobook title. "Accessed" means that a title has had activity—it's been viewed, checked out or renewed. You'll find totals for accesses, checkouts and renewals in the eAudiobook-specific report.

For any eAudiobook collection that has a checkout cap associated with it, you will see your library's cap and the number of checkouts remaining against your library's cap when you run a report on your Downloadable eAudiobook collection.

NetLibrary Usage Report. Statistics such as numbers of access, checkouts and renewals can help you gauge the success of your NetLibrary investment. This screen shows an eAudiobook specific-report, with checkouts and renewals.

Library RESOURCE CENTER

Home Administration TitleDirect™ Admin TitleSelect™ Reports Help

Public Library

You are here: [home](#) > [reports](#) > [reports step 1](#)

COLLECTION & USAGE REPORTS

Report: Activity by Title

Interval: Lifetime

Selected Collection(s): Audiobook Bible, Audiobook Pimsleur L Audiobook Subscription Cap: (Cap = 7500, Remaining Checkout

Selected Members(s): [Public Library](#)

This report returns data for members that this account has permission to view.

Page 1 of 30 - Total Records Returned: 731

Display 2

Accesses	Checkouts	Renewals	Title	Subject	LCC	Dewey	Authors	Publisher	I
2	2	0	The Autobiography of Benjamin Franklin Biography On Cassette; Unabridged.	History: World and General	E302.6.F7A2 1986eab	923.273	Franklin, Benjamin.	Recorded Books	1
2	1	1	The 11th Element: The Key to Unlocking Your Master Blueprint for Wealth and Success Recorded Books Development; Unabridged.	Business, Economics and Management	HF5386.S377 2004eab	650.1	Scheinfield, Robert.	Recorded Books	1
1	1	0	Wolves of the Calla Dark Tower; Unabridged.	Literature	PS3561.1483W65 2004eab	813/.6	King, Stephen.	Recorded Books	1
1	1	0	A Voice in the Wind Unabridged.	Literature	PS3568.183165V65 2004eab	813/.54	Rivers, Francine.	Recorded Books	1
0	0	0	Winter Fire Unabridged.	Literature	PR9199.3.B424W56 2004eab	823/.914	Beverley, Jo.	Recorded Books	1

Rows Per Page: 25

Total Checkouts: 19

Total Renewals: 1

Total Accesses: 20

1 2 3 4 5 6 7 8 9

Export [Tab Delimited format](#) (Plain text file with a tab between each column of text). Compatible with multiple a; spreadsheet or database applications.

Total Accesses refers to the number of times all the titles reported on were viewed, renewed or checked out.

Export the data to create charts and graphs.

Selected Collections are all the collections included in this eAudiobook report, with the cap also noted.

Total Records Returned refers to the number of titles reported on and available in this eAudiobook collection.

Attachment 4 OCLC NetLibrary *Going Portable* Brochure

Renew

1. Delete the eAudiobook file from your portable device. (You do not need to delete the file from your PC)
2. Renew the expired license on the NetLibrary site.
 - a. *Log in to NetLibrary and click on the Checked Out Items link in the top right corner of the page.* This will display your checked out titles.
 - b. Find the eAudiobook title and click on the *Download this Audiobook* link.
 - c. Click on the link *Renew your Checkout* (No Download. Only license to play file).
 - d. This will renew your license and allow you to listen to your eAudiobook.
3. You may now also transfer the eAudiobook to your portable device.

When You Finish Listening

Delete the eAudiobook file from your portable device following its instructions.

NetLibrary Help

Click *Help* while accessing NetLibrary for more information about eAudiobooks.

Additional assistance

Contact the manufacturer for problems with your personal computer, media player software or portable device. Contact your librarian or the NetLibrary administrator in your organization for local assistance. You may also contact NetLibrary for additional assistance at

Contacting NetLibrary

1. Go to NetLibrary Help page
2. Click *Contact Us* at the bottom right.
3. Complete the form and click *Send*.
NetLibrary will respond as soon as possible.

Portable eAudiobooks

eAudiobooks from NetLibrary are digital versions of audiobooks that are available over the internet from your Library. You can search for, check out and download eAudiobooks to your computer through the NetLibrary platform via the internet.

eAudiobooks can be played on any desktop or portable computer that supports Windows Media Player version 9.0 and above.

Once downloaded, eAudiobooks can be transferred to a wide range of portable devices that support playback of secure or protected wma files- including portable music players and portable media centers from Archos, Creative Labs, Samsung, Toshiba and other manufacturers.

To go portable, transfer an eAudiobook to your portable device using Windows Media Player software.

Enjoy listening to the eAudiobook anywhere.

www.netlibrary.org

Going portable with eAudiobooks

Listen to your library's eAudiobooks anywhere!



NetLibrary is the eContent platform of OCLC. All rights reserved. All product and service names are trademarks or service marks of their respective companies.



What You Need

To go portable, you need Windows Media Player, version 9.0 or higher, and a portable device.

The portable device must support playback of:

- Secure or protected wma files
- 32 kbps files

For an optimal listening experience, the portable device should:

- Have a storage capacity of at least 512 MB
- Include features for playing long files and returning to a designated place in a file such as
 - › Full time stamping
 - › Bookmarking

Note: NetLibrary eAudiobooks include Digital Rights Management (DRM) protection. Portable devices that support the playback of secure or protected wma files are compatible with NetLibrary eAudiobooks. iPods and Zunes do not support the playback of secure or protected wma files.

We have tested a number of Portable Devices available in the market today to ensure their compatibility with NetLibrary eAudiobooks. Each device is tested for the features and functions necessary to deliver optimal audiobook listening.

Visit <http://www.netlibrary.org/players> to view the most current list of tested devices.

New devices are tested as they become available in the market. We recommend checking back periodically for updates.

Prepare To Go Portable

Before you check out and download an eAudiobook:

- Watch the eAudiobooks demo available in the NetLibrary Help page
- Ensure that Windows Media Player, version 9.0 or higher, is installed on your computer.
- Set up your portable device by installing its software and connecting it to your computer.
- Test your portable device by transferring a file from your computer

Checkout & Download

Checkout

- Search and find an eAudiobook title you want to checkout.
- From the search results, click on *Download this eAudiobook*.
- Select the CD Quality option (not the Radio Quality option).

Download

- Select the *Save Download* option (not the *Open* option).
- Save the file to a convenient location on your computer, such as your desktop. It may be a good idea to make a folder right on your desktop to keep all your eAudiobook files.
- Play the file on your computer or transfer it to a portable device using Windows Media Player.

Transfer to a Portable Device

To transfer an eAudiobook file to your portable device:

1. Connect your portable device to your computer following the device's instructions.
2. Open Windows Media Player.
3. In the File menu, open the downloaded file. This activates the license and begins to play the eAudiobook.

Follow the remaining steps listed here for the version of Windows Media Player installed on your computer

Windows Media Player—Version 9

4. In the *File* menu, select *Copy* and then select *Copy to Portable Device*.
5. Click the *Copy* button located above the right pane.
6. When the transfer is complete, disconnect your portable device following its instructions.
7. Close Windows Media Player.
8. Enjoy listening to the eAudiobook on your portable device.

Windows Media Player—Version 10

4. Click the *Library* tab.
5. Find your eAudiobook title in the Playlist.
6. Select *Sync List* in the drop-down menu above the right pane.
7. Click and drag your eAudiobook title into the right pane.
8. Click the *Start Sync* button located below the right pane.
9. When synchronizing is 100 percent complete, disconnect your portable device following its instructions.
10. Close Windows Media Player.
11. Enjoy listening to the eAudiobook on your portable device.

Windows Media Player—Version 11

4. Click the *Sync* tab (not the drop-down list below the tab).
5. Click *Now Playing* in the menu on the left.
6. Click and drag your eAudiobook title into the right pane.
7. Click the *Start Sync* button located below the right pane.
8. When synchronizing is 100 percent complete, disconnect your portable device following its instructions.
9. Close Windows Media Player.
10. Enjoy listening to the eAudiobook on your portable device.



Attachment 5 OCLC NetLibrary Training Sample

For a sample of our training materials, please go to:
<http://support.oclc.org/resolutions/exampleeAB.ppt>.

Please note that this is a very large PowerPoint file and may take several minutes to download.

Attachment 6 OCLC NetLibrary *Access from Anywhere*

Which authentication options work best for my library?

Review the chart below to help identify which method(s) work best for your library. The options can be combined to work both inside and outside of your library. In all the options, users can be authenticated whether they begin their search at the library OPAC, NetLibrary.org or your library's electronic resources page.

NetLibrary Authentication Server	IP Address Recognition	Secure Referring URL	Proxy Server		
What do you want out of an authentication method?	On-site access	●	●	●	●
	Remote access	●		●	●
	Real-time authentication against the library's user database	●		○	○
	Controlled access by criteria such as location, fines, etc.	●		○	○
	Users provide info ONCE (integrates with ILS)	●			
How do you provide access to your other electronic resources?	What do you have in place already?		●		
	Defined set of known IP addresses			●	
	Secure authentication page			●	
	Proxy server			●	●
	What are you planning to have?				
	Plan to purchase a proxy server	●			●
	Do not have or wish to purchase a proxy server		●	●	
Staff with skills to create authentication page	●		●	●	

○ some proxy servers provide this

NetLibrary Accounts

Users do not need an account to view eBooks online or preview eAudiobooks. Depending on your authentication method, they may need an account to check out materials. If IP, Proxy Server or Secure Referring URL is used for authentication, users will need NetLibrary accounts to check out eBooks, download eAudiobooks and use personalization features (booklists and notes).

Users can easily create NetLibrary accounts—by just clicking on the “Create a Free Account” link in the upper right hand corner at www.netlibrary.com. If your library uses the NetLibrary Authentication Server, users do not need NetLibrary accounts, because the system authenticates against your ILS and individually authenticates the user.

Further Resources

Please contact OCLC if you need further assistance with authentication. Customized options may be available in unique situations.

More information on NetLibrary authentication options is available at: www.oclc.org/netlibrary/support/authentication

NetLibrary support information is available at: www.oclc.org/netlibrary/support/

If you need additional help, please contact OCLC support at 1-800-848-5800 or support@oclc.org or contact your OCLC regional service provider.

www.oclc.org



PRM12121A 0606—.05M, OCLC



Access from Anywhere:

An Overview of NetLibrary Authentication Options

Authentication provides users secure access to your NetLibrary materials. NetLibrary has been designed to work with a variety of authentication options for access from both inside and outside your library. Depending on the authentication methods you choose, users will be able to access your eContent collection anytime, anywhere, 24/7. This guide summarizes the options available.



Authentication Options

NetLibrary supports four authentication methods. Some methods allow users to be authenticated automatically while others require user input (such as a library bar code). Most libraries use a combination of methods to provide access from inside and outside the library.

- NetLibrary Authentication Server
- IP (Internet Protocol) Address Recognition
- Secure Referring URL
- Proxy Server

If your library provides access to electronic resources, you probably already have one or more of these in place.

CONSIDERATIONS

As you begin to determine which method(s) will work for your library, you will want to think about your library’s specific situation and needs:

- What authentication does your library already use?
- Do you want to provide access to users in the library and at remote locations?
- Does your library have technical expertise available to create Web pages and/or set up servers?
- Do you want to be able to control access by criteria such as location, amount of overdue fines, etc.?

NetLibrary Authentication Server powered by CybraryN™ 1

BENEFITS/FEATURES

- Enables on-site and remote access
- Real-time authentication allows controlled access based on user data, including branch, card type and fines on card
- Minimizes user input; users can log in with their library bar code and check out materials without a NetLibrary account

How it Works: The server queries the library’s ILS to verify user information. This solution allows you to integrate your existing ILS with NetLibrary functionality—users employ their existing library ID (bar code) to be authenticated, check out materials and personalize their environment. The NetLibrary Authentication Server does not require a NetLibrary account to check out or download eContent. The Server is available as a one-time purchase with an annual maintenance fee.

When to Use: When your library wants real-time authentication and minimal user input.

IP (Internet Protocol) Address Recognition 2

BENEFITS/FEATURES

- Enables on-site access
- Easy to set up for access within your location
- Requires no input from the user—the authentication happens automatically

How it Works: Every computer connected to the Internet has an IP address (for example: 132.174.95.5). You can grant computers access to NetLibrary by specifying IP addresses, so anyone using those computers will be authenticated.

When to Use: This works best when you know the specific computers to which you want to grant access (i.e., within your library, campus or site).

Secure Referring URL 3

BENEFITS/FEATURES

- Enables on-site and remote access
- Provides a relatively quick way to set up authentication (provided the library staff has the expertise to set up an authentication Web page)
- Some proxy servers (i.e., EZProxy) and ILS systems (i.e., SirsiDynix or Innovative Interfaces) can also be configured to control access, such as restricting users with library fines

How it Works: In this method, your library provides access to the collection only after the user has been identified as valid. Users are first prompted for information (such as a library bar code). Once the information is verified, the library links to NetLibrary, which recognizes the user is coming from the “referring URL,” and authenticates the user.

When to Use: Smaller libraries can employ this method with a Web page that verifies information.

Proxy Server 4

BENEFITS/FEATURES

- Enables on-site and remote access
- Easy to set up if your library has a proxy server and configuration experience
- Can provide an additional level of authentication, such as searching user databases for information such as fines

How it Works: Many libraries already use proxy servers to facilitate authentication. Users who want access to eContent will first be prompted for information (such as a library bar code) to be authenticated. Once the information is validated, the user will be able to access NetLibrary eContent.

When to Use: If your library already has a proxy server, it can also authenticate NetLibrary users.

Attachment 7 OCLC NetLibrary Marketing Sample

eAudiobooks Available HERE.



At:
Your library Web site URL
And logo here.

Chances are, you can access our eAudiobooks from where you're sitting right now. All you need is a computer and an Internet connection, and you can hear our entire collection of the latest digital audiobooks—**FREE!**

Simply find the title you want and download it to your computer. Then either listen to it from your desktop or load it into your WMA-compatible portable music player and take it with you. It's really that easy.

So the next time you're preparing for a long trip or just a casual afternoon at the beach, visit us. You'll like what you'll hear.

eAudiobooks.
Online all the time.
Anywhere you are.

Your library Web site URL here.

Attachment 8 OCLC NetLibrary Legal Documents

SCOPE OF INFORMATION

The information contained in the materials submitted by NetLibrary, a division of OCLC Online Computer Library Center, Inc., ("NetLibrary") describes the products and services NetLibrary can provide to address the requirements set forth in the Montana State Library's (the "Library") Request for Information ("RFI") . Any products and services ultimately provided by NetLibrary shall be governed by NetLibrary 's standard terms and conditions for those products and services, which shall be furnished to the Library upon request. Pricing provided by NetLibrary is made available solely for the Library's planning purposes and may change depending upon when the Library issues its RFP. Differences between the products and services presented by NetLibrary and your requirements are noted in the accompanying materials, if considered significant.

If representatives of the Library wish to discuss the modification of standard NetLibrary terms and conditions or the introduction of additional terms, NetLibrary is willing to negotiate. Before any legally binding commitments are made, however, NetLibrary and the Library will work out mutually acceptable contracts.

The prices given in the accompanying materials are the result of independent NetLibrary action and not the result of any undisclosed collusion between or among NetLibrary and any third parties.

To the best of NetLibrary's knowledge, no undisclosed conflict of interest between the Library and any of its employees will be caused by NetLibrary 's entering into negotiations with the Division.

Although NetLibrary may have responded to the sections of the RFI dealing with specification requirements as requested, these responses are for the Library's evaluation purposes only. NetLibrary 's response assumes that NetLibrary and the Library shall mutually develop and agree to final project specifications consisting of the RFI specifications to the extent those specifications are acceptable to NetLibrary and any other specifications or adjustments to the specifications required by the Library or NetLibrary .

NetLibrary reserves the right to increase the prices set forth in the accompanying materials and any resulting contract between the parties at any time as required to recover increases in costs, expenses, and charges imposed on NetLibrary by its suppliers, vendors, and licensors, whose products, services, or property of any kind and in any form are incorporated into or consumed or used in NetLibrary 's production or performance of products, work, or services.

Provision of products and services is contingent upon negotiation of mutually acceptable contracts which are accepted by a legally competent and financially responsible entity acceptable to NetLibrary. NetLibrary reserves the right to correct any errors or omissions in its response at any time.

CONSORTIUM AUDIO BOOK AGREEMENT

THIS CONSORTIUM AUDIO BOOK AGREEMENT (this "Agreement") is by and between Montana State Library, a Montana nonprofit agency, ("Consortium") and **NetLibrary**, a division of OCLC Online Computer Consortium Center, Inc., an Ohio nonprofit corporation ("NetLibrary").

WHEREAS, NetLibrary has acquired certain rights to convert various books and other works to electronic format and to market and distribute the works as converted as Audio Books, and NetLibrary operates an electronic Consortium service for hosting and managing Audio Books and other materials over the Internet.

WHEREAS, Consortium desires to purchase licenses to certain Bundled Collections subject to the terms and conditions described in this Agreement,

IN CONSIDERATION OF THE MUTUAL COVENANTS AND OBLIGATIONS SET FORTH BELOW,

the parties agree as follows.

I. DEFINITIONS; AUDIO BOOK LICENSES

A. Definitions. Terms defined within this Agreement have the respective meanings attributed to them throughout this Agreement or in this Section I.A. Any defined term may be used in the singular and in the plural, as appropriate in the context.

1. "Bundled Collection(s)" means a collection of Audio Books that NetLibrary and Recorded Books have agreed in writing to group together for Subscription sales.
2. "Audio Books" mean NetLibrary's electronic versions of certain Audio Books and other works in which NetLibrary has acquired certain rights.
3. "Audio Book Services" mean NetLibrary's services related to Consortium's ongoing access to and use of Audio Books via the Internet, as further described in Exhibit A.
4. "Consortium's NL Website" means the Website operated by NetLibrary and open to Consortium, Members, and Patrons in order to access and use Audio Books licensed to Consortium.
5. "Library's NL Website" means the Website operated by NetLibrary and open to Library and Patrons in order to access and use eBooks licensed to Library.
6. Unless otherwise specified on the Audio Book Order Confirmation Form, the "Effective Date" of this Agreement means the first day of the month following the month in which NetLibrary processes Consortium's Subscription purchase.
7. The "Jurisdiction" means the geographical territory described on Exhibit B hereto.
8. A "MARC Record" means an electronic record containing metadata and other relevant information about the corresponding Audio Book.
9. "Members" means the permitted member library organizations that Consortium has authorized to access the Bundled Collection by giving NetLibrary written notice and Consortium will provide for NetLibrary any individual information needed to identify said Member(s) and to provide them and their Patrons access. The Members of Consortium are listed on Exhibit C.
10. "Member's NL Website" means the Website operated by NetLibrary and open to Members, and Patrons in order to access and use Audio Books licensed to Consortium

11. "NL Website" means the Website operated by NetLibrary and open to the general public in order to provide information about NetLibrary's products and services.

12. "Patrons" mean Consortium's registered faculty, members, patrons, students, and other authorized users, including both onsite users and remote users.

13. A "Subscription" means an annual license for access to the Bundled Collection on the basis described in Exhibit B.

14. "Subscription Price" means the price established for the annual license for access to the Bundled Collection.

15. Except as otherwise specified on the Audio Book Order Confirmation Form or as otherwise agreed upon between the parties in writing, the "Term" of this Agreement commences on the Effective Date and continues in effect for one year. The Term will renew on each anniversary of the Effective Date for another year for as long as Consortium pays the Subscription Fee and NetLibrary continues to provide this Service.

B. Audio Book Licenses.

1. Purchase of Licenses.

- a. Audio Books. During the Term of the Agreement, Consortium may select and purchase Subscriptions to Bundled Collection(s) in accordance with NetLibrary's then current ordering practices. Each final order of Subscriptions to Bundled Collection(s), as evidenced by an Audio Book Order Confirmation Form, is incorporated in this Agreement by reference.
- b. MARC Records. NetLibrary and Consortium agree that all MARC Records are the property of OCLC; Consortium may use MARC Records, if any, only for its own internal purposes as further described in Exhibit D.

2. Copyrighted Works. Consortium acknowledges and agrees that the copyright to each Audio Book is owned by or licensed to NetLibrary, Recorded Books, and/or the respective publisher thereof. All Rights Reserved. By purchasing a Subscription to a Bundled Collection, Consortium obtains certain rights to access and use a copy of the Audio Book under this Agreement, but neither Consortium, Members, nor Patrons obtain or own any rights in the copyrights or any other intellectual property rights that may be associated with the Audio Book. Consortium agrees that it is responsible for all use of Audio Books by Consortium, Member(s) of Consortium, and Patrons of a Member, and that any use of Audio Books by Consortium, its Members and Patrons is governed by and will comply with applicable laws, including without limit U.S. copyright laws. Consortium acknowledges that it and its Patrons have no right to make copies of any Audio Book, or any portions thereof, except to the extent permitted by applicable copyright laws.

C. Member Access.

1. Bundled Collection(s) Access. NetLibrary will only permit access to and use of a Bundled Collection(s) by a Member of Consortium and the Member's Patrons if: (i) Consortium has executed a Consortium Agreement with NetLibrary, (ii) Consortium has given NetLibrary written notice that Consortium is willing to allow the Member to access a particular Bundled Collection, and (iii) the Consortium has assumed responsibility for the actions of the Member and its Patrons. Until all of these conditions have been satisfied, NetLibrary will have no obligation to permit any Member of Consortium to access any Bundled Collection of Consortium.

2. Bundled Collection(s) Parameters. At the time of purchase access to the Bundled Collection closes. NetLibrary will provide access to this Bundled Collection to the Members that Consortium has authorized to access the Bundled Collection by giving NetLibrary written notice within 30 days after the Bundled Collection closes. NetLibrary will not provide access to this Bundled Collection to any Members that Consortium has not authorized to access the Bundled Collection by giving NetLibrary written notice within 30 days after the Bundled Collection closes.

3. Notice Requirements. In addition to giving NetLibrary written notice that Consortium is willing to allow a Member to access a particular Bundled Collection, Consortium will provide for NetLibrary any individual information needed to identify the Member(s) and to provide them and their Patrons access to the Bundled Collection.

II. AUDIO BOOK SERVICES

A. Provision of Audio Book Services. During the Term, NetLibrary will establish, host, and administer Consortium's NL Website and Member's NL Website(s), if applicable, using NetLibrary's existing electronic bookshelf technology and NL Website. Consortium, Members, and Patrons will access Consortium's Bundled Collection through Consortium's NL Website and Member's NL Website(s), if applicable, and Consortium will receive Audio Book Services for Audio Books in the Bundled Collection. Consortium, Members, and Patrons will access Consortium's Audio Book collection and Audio Book Services via Consortium's, or Member's, if applicable, Internet connection, which will be Consortium's, or Member's, if applicable, expense and responsibility.

B. Consortium and Patron Usage.

1. Limiting Access Measures. Consortium will be solely responsible for determining which Patrons will have access to Consortium's NL Website and Member's NL Website(s), if applicable, under this Agreement. Consortium agrees to (a) implement appropriate measures to limit the use of Audio Books through access by Patrons ("Limiting Access Measures") within a reasonable time frame, (b) communicate to Members the requirement to implement Limiting Access Measures, and (c) reasonably assist NetLibrary in bringing a Member into compliance with Limiting Access Measures if such Member is discovered to be out of compliance. Limiting Access Measures may change from time to time and include, but are not limited to, remote patron authentication applications, authentication through protected IP addresses, a patterned identification check and privileged user accounts. NetLibrary, in its sole discretion, may discontinue Consortium's or a Member's access to Consortium's NL Website and such Member's NL Website, if Consortium or such Member fails to implement Limiting Access Measures within a reasonable timeframe. Except for standard fees charged by Consortium to Members and/or Patrons, Consortium will not charge any Patron for use of Consortium's NL Website and Member's NL Website(s), if applicable,.

2. Terms of Use.

a. Subject to this Agreement, Consortium is solely responsible for determining whether or not a Member may be granted access to the Bundled Collection(s). Subject to the applicable provisions of this Agreement, each Member is solely responsible for determining whether or not a Patron may be granted access to the Bundled Collection(s).

b. The use of Consortium's NL Website and Member's NL Website(s), if applicable, by Consortium, Members, and

Patrons will be governed by the "Terms of Use" currently available at <http://www.netlibrary.com/TermsOfUse.aspx>, as they may be amended from time to time, which are incorporated in this Agreement by reference. If a Consortium or a Patron violates the Terms of Use, NetLibrary reserves the right, in its sole discretion, to suspend Consortium's or the Patron's access to and use of Consortium's NL Website and Member's NL Website(s), if applicable, . Consortium acknowledges and agrees that, in the case of repeated or persistent violations, NetLibrary may terminate this Agreement.

3. Tools. Neither Consortium nor Members, if applicable, will use, implement or authorize use of any computerized or automated tool or application to search, index, test or otherwise obtain information from Consortium's NL Website and Member's NL Website(s), if applicable, .

III. GENERAL PROVISIONS

A. Termination.

1. Termination Without Cause. Either party may terminate this Agreement without cause effective upon the conclusion of the then current Term, by giving the other party at least 60 days prior written notice of its intent to do so.

2. Termination for Cause. Either party may terminate this Agreement for cause at any time by providing the other party with prior written notice of the occurrence of any of the following events:

- a. a party fails to timely pay any amounts due and payable, provided that the nonpayment is not cured within 10 days of the notice; or
- b. a party breaches any material provision of this Agreement provided that the breach cannot be, or is not, cured within 60 days of the notice.

3. Survival. All terms of this Agreement that are intended to survive termination for any reason of this Agreement will so survive, including without limit Section I, Paragraph B.2, Section II, Paragraph B and Section III, Paragraphs A.3, C, D, E, F.5 and F.12.

B. Limited Warranty. NetLibrary warrants that NetLibrary has the necessary authority to license the Audio Books to Consortium and, if applicable, to provide Audio Book Services to Consortium. NetLibrary warrants that it will use its commercially reasonable efforts to provide Audio Book Services as described in this Agreement.

C. Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN SECTION III.B ABOVE, CONSORTIUM'S NL WEBSITE, MEMBER'S NL WEBSITE, AUDIO BOOK SERVICES, AND ALL AUDIO BOOKS LICENSED UNDER THIS AGREEMENT ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND AND NETLIBRARY AND ITS CONTENT PROVIDERS EXPRESSLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMIT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER NETLIBRARY NOR ITS CONTENT PROVIDERS WARRANTS, GUARANTEES OR MAKES ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF CONSORTIUM'S NL WEBSITE, MEMBER'S NL WEBSITE, OR ANY AUDIO BOOKS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY NETLIBRARY OR ITS EMPLOYEES WILL CREATE A REPRESENTATION OR WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF NETLIBRARY'S OBLIGATIONS, AND CONSORTIUM MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.

D. Limitation on Liability. Neither party will claim special, incidental, indirect, or consequential damages; including without limit lost profits, for breach of this Agreement. This limitation will also apply to any claims brought against NetLibrary's content providers. Remedies are limited to claims for amounts due, for injunctive relief only as provided, or for direct damages. A party's aggregate liability for any and all claims, losses, liabilities, and demands arising, whether for breach of contract, in tort or otherwise, are limited to the total amount of Audio Book License Fees paid by Consortium to NetLibrary, during the 12 month period immediately preceding the date on which the claim first arose.

E. Payment Terms. All fees and charges are due and payable 30 days from the date of the related invoice. NetLibrary may deny Consortium, Members, and Patrons access to Consortium's NL Website and Member's NL Website(s), if applicable, until the unpaid invoice is paid in full.

F. Other Provisions.

1. Entire Agreement. All exhibits referred to in this Agreement are incorporated in this Agreement by reference. This Agreement sets forth the entire agreement between the parties with respect to the subject matter of the Agreement. This Agreement governs all orders for Audio Books and Audio Book Services placed by Consortium during the Term.

2. Modification or Amendment. Any modification or amendment of this Agreement must be in writing and signed by a duly authorized representative of each party. For clarification, no term contained in a purchase order or other similar document submitted to NetLibrary by Consortium will be binding on the parties.

3. Assignment. Neither party may sell, assign, transfer or convey this Agreement or any rights and obligations without the prior written consent of the other party, which will not be unreasonably withheld. But, NetLibrary may assign or transfer this Agreement to an affiliated company or to a third party that acquires substantially all of its assets upon written notice to the Consortium.

4. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.

5. Governing Law, Jurisdiction and Venue. This Agreement will be exclusively governed by the laws of the State of Colorado, U.S.A. without regard to any conflict of laws provisions contained therein, except as to copyright, trademark and other intellectual property matters, which are exclusively governed by the laws of the United States and any applicable international conventions. NetLibrary and Consortium agree that any action arising from or out of the negotiations, execution, interpretation or enforcement of this Agreement may be brought in the state or federal courts located in the State of Colorado, U.S.A. Consortium hereby consents to exclusive jurisdiction and venue in the state and federal courts located in the State of Colorado, U.S.A.

6. Severability. If any provision of this Agreement proves to be illegal, invalid or unenforceable, the remainder of this Agreement will not be affected thereby, and in lieu of any provision of this Agreement that is illegal, invalid or unenforceable, there will be added as a part of this Agreement a provision as similar in terms to the illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

7. Further Assurances. Consortium and NetLibrary agree to take the further actions and to execute the further documents

as may be necessary or appropriate to effectuate this Agreement and the transactions contemplated in this Agreement.

8. Force Majeure. Neither party will be liable for, or have the right to terminate this Agreement as a result of, any delays or failures to perform any of its obligations under the Agreement to the extent that the delays or failures are due to circumstances beyond its reasonable control, including without limit acts of God; strikes; riots; acts of war; power failures; and functions or malfunctions of the Internet, telecommunications services, firewalls, encryption systems, and security devices; or governmental regulations imposed after the Effective Date.

9. Waiver. The waiver by either party of any right granted under this Agreement will not be deemed a waiver of any other right granted under this Agreement, or a precedent for any subsequent waiver.

10. No Partnership. As to one another the parties are considered independent contractors. This Agreement is not intended to create and will not be construed to create a partnership, joint venture, agency relationship, or other association..

11. No Third Party Beneficiaries. This Agreement is not intended to confer any benefit on any person or entity not a party to this Agreement.

12. Notices. Any notice, demand, request, consent, approval or other communication (collectively, "Notices") required or permitted to be given under this Agreement will be in writing and sent by hand delivery, special courier capable of confirming receipt, United States Mail (certified mail, return receipt requested), or facsimile or e-mail to a non-individual-specific e-mail address if receipt is confirmed. The parties acknowledge and agree that a Notice might not be deemed effective if receipt is not confirmed. Notices will be sent to the following addresses:

	If to NL:	If to Consortium:
	NetLibrary, a division of OCLC Online Computer Library Center, Inc.	Montana State Library
Address:	4888 Pearl East Circle, Suite 103	PO Box 201800
Address:	Boulder, Colorado 80301	Helena, MT 59620-1800
Attention:	Sales Management	Sarah McHugh
Telephone:	(303) 415-2548	406-444-9816
Facsimile:	(303) 381-8600	406-444-0266
e-mail address:	sales@netlibrary.com	samchugh@mt.gov

13. Facsimile Copies. A copy of the signed original of this Agreement transmitted by facsimile machine will be binding on both parties and have the same force and effect as the signed original.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, to be effective as of the Effective Date, as set forth below.

NetLibrary: NetLibrary, a division of OCLC Online
Computer Library Center, Inc.

By: _____

Name:	<u>Rick Schwieterman</u>
Title:	<u>Vice President and Chief Financial Officer</u>
Date:	<u></u>
Consortium:	<u>Montana State Library</u>
By:	<u></u>
Name:	<u>Sarah McHugh</u>
Title:	<u></u>
Date:	<u></u>

EXHIBIT A TO CONSORTIUM AUDIO BOOK AGREEMENT
Audio Book Services

- Existing Platform. At the time this Agreement is executed, the NL Website and Consortium's NL Website and Member's NL Website(s), if applicable, are supported by NetLibrary's existing electronic bookshelf technology, which includes a third party operating system, third party database management software, and proprietary NetLibrary software.
- Delivery of Audio Book Services. Payment of the Subscription Fee allows Consortium, Members, and Patrons to access the Bundled Collection on Consortium's NL Website and Member's NL Website(s), if applicable, and receive Audio Book Services for such Audio Books for 1 year.
- Accessing Audio Books. Subject to the terms of this Agreement, NetLibrary will allow Consortium, Members, and Patrons to access the Bundled Collection.
- Hosting of Audio Books. NetLibrary will host the Bundled Collection on Consortium's NL Website and Member's NL Website(s), if applicable, for as long as Consortium pays the Subscription Fee and NetLibrary continues to provide this Service.
- Patron Access. Consortium will implement and maintain Limiting Access Measures, based on NetLibrary's standard systems, under which Consortium, Members, and Patrons will have controlled access to Consortium's NL Website. Typically, Member and Patron access is controlled by valid IP address or by Member or Patron ID and password. NetLibrary will consider other proposed Member and Patron access methods on a case-by-case basis, but may reject such proposed methods if, in NetLibrary's opinion, access will not be sufficiently controlled.
- Reports. Payment of the Subscription Fee entitles Consortium to the standard reports offered by NetLibrary.

EXHIBIT B TO CONSORTIUM AUDIO BOOK AGREEMENT
Audio Book License Fees

- Libraries are classified into 1 of 7 groups based on their circulation. NetLibrary will charge Consortium a yearly institutional license fee based on this classification.
 - Subscription Prices for Bundled Collection(s) of Audio Books covered by this Agreement will be listed on the applicable Audio Book Order Confirmation Form.
 - As NetLibrary adds additional Bundled Collection(s) of Audio Books or changes the terms and/or prices for existing

Bundled Collection(s) of Audio Books, the NetLibrary Subscription Prices for Audio Books are subject to change. However, in no case will changes to the NetLibrary Subscription Prices be applied retroactively to existing Subscriptions.

2. Additional Subscription Terms for Bundled Collection(s) of Audio Books.

- All purchases of Subscriptions are final. For purposes of clarification, Consortium will not receive any refund or credit for check-outs, if any, that are not used during the Subscription.
 - A Consortium or other organization that purchases a Subscription will receive an annual license to access the Bundled Collection. The Consortium or other organization will not own any other rights in the Bundled Collection.
 - Except as specified in the Agreement and the Audio Book Order Confirmation Form, there are no other Subscription Terms for Bundled Collection(s) of Audio Books. In the event of a conflict between the Agreement and the Audio Book Order Confirmation Form, the Audio Book Order Confirmation Form will control.
- The NetLibrary System will cap the maximum number of check-outs for a Consortium. The Patrons of a Consortium that purchases a Subscription to a Bundled Collection may check-out up to the number of Audio Books specified in the Audio Book Order Confirmation Form for the Category of access purchased by the Consortium, but the NL System will not allow Patrons to check-out more than the applicable number of Audio Books specified in the Audio Book Order Confirmation Form for the Category of access purchased by the Consortium.
 - If the Patrons of a Consortium that purchases a Subscription to a Bundled Collection check out the maximum number of Audio Books specified in the Audio Book Order Confirmation Form for the Category of access purchased by the Consortium, then the Consortium can upgrade its access by purchasing additional check-outs (in blocks of 500). Pricing for additional check-outs will be provided upon request.

EXHIBIT C TO CONSORTIUM AUDIO BOOK AGREEMENT
Jurisdiction and List of Consortium Members

- Jurisdiction. Consortium's Jurisdiction is the state of Montana and Consortium operates and serves Patrons in the Jurisdiction.
- List of Consortium Members. The Following organizations are Members of Consortium:

EXHIBIT D TO CONSORTIUM AUDIO BOOK AGREEMENT
Guidelines for the Use and Transfer of OCLC-Derived
Records

Revision of November 16, 1987

I. GUIDELINES

(See Definitions in Part II below)

1. Each member and nonmember library may use records without restriction, and may transfer records of its own holdings without restriction to other libraries.

2. In addition to transfers to libraries, each member and nonmember library may transfer records of its own holdings without restriction, to (a) member networks, (b) state and multi-state library agencies and (c) all other noncommercial firms.

a. Member networks may produce and transfer to any member library, copies on magnetic tape of records used or inserted into the OCLC database by the library. Each member network also may process records of the holdings of any member or nonmember library which has employed and agreed to pay it for that service, provided the member network has first signed either an individual agreement with the library, or a general agreement with OCLC, containing measures agreed upon by OCLC and the member network for protection of the records it has been employed to process. Any other use and transfer of records by member networks will be as provided in separate understandings with OCLC.

b. The use and transfer of records by library systems or projects operated by or under the aegis of one or more state or national library agencies will be as provided in separate understandings with OCLC. Such understandings may include (i) arrangements to incorporate state or national bibliographic databases into the OCLC system, (ii) paid-up licenses to use records in state or national programs (e.g., by means of payments for OCLC multi-institution tapes) and/or (iii) any other understandings that will facilitate state or national programs as well as the maintenance and enhancement of the OCLC database.

c. The use and transfer of records by any other organizations to which transfers are made under this Guideline 2 will be as provided in separate understandings with OCLC.

3. In addition, each member and nonmember library may transfer records of its own holdings to commercial firms which the library has employed and agreed to pay to process such records, provided that each commercial firm has first signed an individual agreement with the library, or OCLC has advised the library that the commercial firm has signed a general agreement with OCLC, in either case containing measures agreed upon by OCLC and the commercial firm for protection of the records it has been

employed to process. In addition, each member and nonmember library may make any other transfers of records to commercial firms, subject to prior written agreements with OCLC. However, there is no requirement for prior written agreements (a) for transfers made under Guideline 1 above to libraries operated by commercial firms or (b) for transfers to commercial firms by former OCLC member libraries of records of their holdings, so long as the libraries maintain no continuing user status with OCLC.

4. When a nonmember organization makes bibliographic information available to OCLC which is subject to usage or transfer restrictions imposed by such nonmember organization, and OCLC nevertheless elects to accept the information for addition to the OCLC database. OCLC will notify libraries to which it makes the information available, and rights to use and transfer records based on such information will be subject to the same restrictions.

5. When transfers under Guideline 1 above are made to machine-readable union catalogs accessible by nonmember libraries, it is requested that machine-readable copies of the records of such union catalogs be submitted to OCLC. OCLC, at its own expense, will have the right to add such records to its database for all uses consistent with its chartered purposes.

6. The Guidelines above apply to all uses and transfers of records except where a mutually acceptable agreement establishing broader or narrower rights is made with OCLC relating to a specific product or service.

II. DEFINITIONS

1. The term "member library" means a general member of OCLC as defined in its Code of Regulations.

2. The term "nonmember library" means any library other than a member library.

3. A "member network" is an OCLC-affiliated regional, state or multi-state library network organization which is in contract with OCLC to provide OCLC services and products, or to assist OCLC to provide such services and products, to general members of OCLC.

4. A "commercial firm" is any organization permitted, under applicable law, to operate on a for-profit basis.

5. The term "records" means bibliographic records and holdings data (including copies thereof) derived from the OCLC database, including derivative works made from such records, and either received in machine-readable form or converted by the transferee into machine-readable form. The term also includes such records when held only in eye-readable form, in the case of proposed transfers to commercial firms. However, records do not include, as to any member or nonmember library (a) bibliographic records designated in the OCLC database as original cataloging by such member or nonmember library and (b) bibliographic records derived by such member or nonmember library from sources other than the OCLC database and to copies of which in the OCLC database its holdings symbol has been attached by tapeloading. Such excluded records are freely transferable and are not dealt with in these Guidelines. OCLC-derived records held only in eye-readable form are freely transferable except to commercial firms.

6. The terms "transfer" and "transfer of records" refer to all sales, exchanges, gifts, sharing and other transfers, and all online access except online access provided to end-user patrons of a library in authorized possession of the records.

CONSORTIUM AGREEMENT FOR AUDIO BOOK PURCHASES

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, to be effective as of the Effective Date, as set forth below.

Consortium: Montana State Library

NetLibrary: NetLibrary, a division of OCLC Online
Computer Library Center, Inc.

By:

By:

Name: Sarah McHugh

Name: Rick Schwieterman

Title: Statewide Projects Librarian

Title: Vice President and Chief Financial
Officer

Date:

Date:

THIS CONSORTIUM AGREEMENT FOR AUDIO BOOK PURCHASES (this "Agreement") is by and between Montana State Library, a non profit agency formed under the laws of Montana ("Consortium") and **NetLibrary**, a division of OCLC Online Computer Library Center, Inc., an Ohio nonprofit corporation ("NetLibrary").

WHEREAS, NetLibrary has acquired certain rights to convert various books and other works to electronic format and to market and distribute the works as converted as Audio Books, and NetLibrary operates an electronic library service for hosting and managing Audio Books and other materials over the Internet.

WHEREAS, Consortium desires to purchase licenses to certain Audio Books, as part of one or more Shared Collections; subject to the terms and conditions described in this Agreement.

WHEREAS, Consortium desires to market Audio Books and Audio Book Services to and for its Members.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND OBLIGATIONS SET FORTH BELOW, the parties agree as follows.

I. DEFINITIONS; AUDIO BOOK LICENSES

A. Definitions.

Terms defined within this Agreement have the respective meanings attributed to them throughout this Agreement or in this Section I.A. Any defined term may be used in the singular and in the plural, as appropriate in the context.

1. "Audio Books" mean NetLibrary's electronic versions of certain Audio Books and other works in which NetLibrary has acquired certain rights.
2. The "Audio Books License" means a license to use the relevant Audio Books(s).
3. The "Audio Books License Fee" means a one-time-only fee for Consortium's license to use the relevant Audio Books(s) and is determined by subtracting the applicable Discount from the Audio Books List Price.
4. The "Audio Books List Price" means the price established by NetLibrary for the license to use the relevant Audio Books(s).
5. "Consortium's NL Website" means the Website account operated by NetLibrary and open to Consortium, Members and Patrons in order to access and utilize the Shared Collection.
6. "Discount" means the percentage of the Audio Books List Price used in determining the Audio Books License Fee. Discounts do not apply to Platform Services.
7. The "Effective Date" of this Agreement means the latest execution date set forth on the signature block below or the date on which Consortium, any Member or any Patron may first access Audio Books, whichever date occurs first.
8. "Consortium's NL Website" means the Website operated by NetLibrary and open to Consortium, Members, and Patrons in order to access and use Audio Books licensed to Consortium.
9. A "MARC Record" means an electronic record containing metadata and other relevant information about the corresponding Audio Book.
10. The "Library Audio Book Agreement" refers to the "Audio Book Agreement for a Member of the Montana State Library Consortium" and means an agreement by and between NetLibrary and a Member governing such Member's access to the Shared Collection(s), and the Member's purchase of Audio Book Licenses and related Audio Book Services for a Unique Collection. An example of the Library Audio Book Agreement is attached as Exhibit D. The Library Audio Book Agreement is subject to change from time to time by NetLibrary.
11. "Members" means the permitted member library organizations that Consortium has authorized to access the Shared Collection or Unique Collection by giving NetLibrary written notice and Consortium will provide for NetLibrary any individual information needed to identify said Member(s) and to provide them and their Patrons access. The Members of Consortium at the time this Agreement was executed are listed on Exhibit C.
12. "Member's NL Website" means the Website account operated by NetLibrary and open to the Member for which it is created and such Member's Patrons in order to access and utilize the Shared Collection(s).
13. "NL Website" means the Website operated by NetLibrary and open to the general public in order to provide information about NetLibrary's products and services.
14. "Patrons" mean Consortium's employees and other authorized users and Member's registered faculty, members, patrons, students, and other authorized users, including both onsite users and remote users. Patrons are individuals and may not be

corporations or other entities. As used herein, Patrons may refer to Consortium's Patrons, Member's Patrons or all Patrons, as the case may be depending on the context.

15. The "Shared Collection(s)" means the collection(s) of Audio Books licensed to Consortium for access and use by Consortium, Members and Patrons pursuant to the terms and conditions of this Agreement.
16. Subject to Section II.A below, the "Term" of this Agreement includes an "Initial Term," which commences on the Effective Date and continues in effect for one year, and any "Renewal Term(s)," which are automatic one year extensions of this Agreement that commence on each anniversary of the Effective Date unless this Agreement is terminated according to Section II.A.1 below.
17. A "Unique Collection" is a collection of Audio Books chosen by a Member and licensed to such Member pursuant to the terms and conditions of a separate "Library Audio Book Agreement" by and between NetLibrary and such Member. A Unique Collection remains separate from the Shared Collection(s). A Member may purchase Audio Book Licenses to a Unique Collection either directly from NetLibrary or through Consortium acting as such Member's agent pursuant to the Library Audio Book Agreement.

B. Audio Book Licenses.

1. Purchase of Licenses.

- a. Audio Books. During the Term of the Agreement, Consortium may select and purchase Audio Book Licenses in accordance with NetLibrary's then current ordering practices. NetLibrary will make the Audio Books Licenses available to Consortium according to NetLibrary's agreements with its content providers, and partners. Such Audio Books will be a part of the Shared Collection. Consortium will be solely responsible for ensuring that it does not acquire or use Audio Books in violation of the laws of the Jurisdiction, and that all Consortium's activities hereunder comply in all respects with the applicable laws of the Jurisdiction. Each final order of Audio Book Licenses is incorporated in this Agreement by reference.
- b. MARC Records. As part of the relevant Platform Fee; NetLibrary will provide Consortium with one copy of the MARC Record that corresponds to each Audio Books License purchased by Consortium for the Unique Collection. NetLibrary and Consortium agree that all MARC Records are the property of OCLC; Consortium may use MARC Records only for its own internal purposes as further described in Exhibit B. NetLibrary will replace defective MARC Records if Consortium notifies NetLibrary of the defect within 90 days of NetLibrary's delivery of the MARC Record to Consortium and NetLibrary concurs that the MARC Record is defective.

2. Copyrighted Works. Consortium acknowledges and agrees that the copyright to each Audio Book is owned by or licensed to NetLibrary and the respective publisher thereof. All Rights Reserved. By purchasing a license to an Audio Book, Consortium obtains certain rights to access and use a copy of the Audio Book under this Agreement, but neither Consortium, Member, nor Patrons obtain or own any rights in the copyrights or any other intellectual property rights that may be associated with the Audio Book. Consortium agrees that it is responsible for all use of Audio Books by Consortium, its Members, and its Patrons, and that any use of Audio Books by Consortium and its Patrons is governed by and will comply with applicable laws, including without limit U.S. copyright laws. Consortium acknowledges that it and its Patrons have no right to make copies of any Audio Book, or any portions thereof, except to the extent permitted by applicable copyright laws and neither it, Members, nor Patrons have any right to grant any third parties the right to use any Audio Book (for purposes of this sentence, third parties does not include Patrons).

C. Consortium Services.

Consortium will assist NetLibrary in the marketing of Audio Books and Platform Services to Members. During the term of this Agreement, Consortium may act as an agent for a Member listed on

Exhibit C. Consortium may aggregate sales and accept invoices from NetLibrary for Audio Book Licenses for a Shared Collection and related Audio Book Services only if such are purchased by a Member listed on Exhibit C, and in such event, Consortium will pay such invoices pursuant to the terms and conditions set forth in this Agreement.

II. GENERAL PROVISIONS

A. Termination.

1. Termination Without Cause. Either party may terminate this Agreement without cause effective upon the conclusion of the then current Initial Term or Renewal Term, as applicable, by providing the other party with at least 60 days prior written notice of its intent to do so.
2. Termination for Cause. Either party may terminate this Agreement for cause at any time by providing the other party with prior written notice of the occurrence of any of the following events:
 - a. a party fails to timely pay any amounts due and payable, provided that the nonpayment is not cured within 10 days of the notice; or
 - b. a party violates any material provision of this Agreement, including without limit a material failure to provide required services, a breach by Consortium, a Member, or Patrons of copyrights laws, failure to comply with any security documents or a breach of the confidentiality provisions of this Agreement, or otherwise has committed breaches of this Agreement that, in the aggregate, are material, provided that the breach(es) cannot be, or is(are) not, cured within 60 days of the notice.
3. Survival. All terms of this Agreement that are intended to survive termination for any reason of this Agreement will so survive, including without limit Section I.B.2; Section(s) II.B, C, D, E, F, G, H.5 and H.13; and Section D of Exhibit A.

B. Limited Warranty.

NetLibrary warrants that, as to any Audio Books licensed to Consortium under this Agreement, NetLibrary has the necessary authority to license the Audio Books to Consortium and to provide Platform Services to Consortium. NetLibrary warrants that it will use its commercially reasonable efforts to provide Platform Services as described in this Agreement.

C. Warranty Disclaimer.

EXCEPT AS EXPRESSLY PROVIDED IN SECTION II.B ABOVE, CONSORTIUM'S NL WEBSITE, MEMBER'S NL WEBSITE(S), PLATFORM SERVICES, AND ALL AUDIO BOOKS LICENSED UNDER THIS AGREEMENT ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND AND NETLIBRARY, ITS CONTENT PROVIDERS, AND CONSORTIUM EXPRESSLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMIT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER NETLIBRARY, ITS CONTENT PROVIDERS, NOR CONSORTIUM WARRANTS, GUARANTEES OR MAKES ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF CONSORTIUM'S NL WEBSITE, MEMBER'S NL WEBSITE(S), OR AUDIO BOOKS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY NETLIBRARY OR CONSORTIUM OR EMPLOYEES OF EITHER PARTY WILL CREATE A REPRESENTATION OR WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF NETLIBRARY'S OBLIGATIONS, AND CONSORTIUM MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.

D. Indemnity.

NetLibrary will defend, indemnify, and hold Consortium harmless from any action based solely on a claim that Audio Books furnished and used within the scope of this Agreement infringe any copyright of any third party, except that this indemnity will not apply to copyright claims arising from content that has been provided to NetLibrary by publishers and is provided by NetLibrary without substantive modification (except for conversion to digital format). Consortium will defend, indemnify, and hold NetLibrary harmless

from any action based on a claim that Consortium has failed to comply with the laws of the Jurisdiction or that the use by Consortium, Members, or Patrons of Consortium's NL Website, Member's NL Website, if applicable, or Audio Books in violation of the terms of this Agreement infringes any copyrights or trade secrets of any third party.

E. Limitation on Liability.

Neither party will claim special, incidental, indirect, or consequential damages; including without limit lost profits, for breach of this Agreement. This limitation will also apply to any claims brought against NetLibrary's content providers. Remedies are limited to claims for amounts due, for injunctive relief only as provided, or for direct damages. Except as provided in Section II.D. above, a party's aggregate liability for any and all claims, losses, liabilities, and demands arising, whether for breach of contract, in tort or otherwise, are limited to the total amount of Audio Book License Fees, and Platform Fees (collectively, "Fees") paid by Consortium to NetLibrary, during the 12 month period immediately preceding the date on which the claim first arose. Notwithstanding any other provision of this Agreement, the nonbreaching party may seek injunctive relief in any court of competent jurisdiction to enjoin or restrain the breaching party from continuing to do any act or commit any violation or threatened violation of this Agreement, and the prevailing party, if any, on a claim for injunctive relief is entitled to recover its reasonable attorney fees incurred in connection with that proceeding. Injunctive relief will be without prejudice to the nonbreaching party's right to also seek money damages for breach of this Agreement.

F. Confidential Information.

To the extent allowed by applicable law, Consortium agrees that it will not use or disclose information relating to (i) the terms of this Agreement, (ii) the content of reports delivered under this Agreement, (iii) pricing terms and other business arrangements governed by this Agreement and (iv) any other documents provided by NetLibrary that have a confidential, proprietary or other similar designation or should reasonably be believed to be the confidential or proprietary information of NetLibrary or its content providers. Notwithstanding the foregoing, Consortium may disclose such information to Members, provided that Members are required to hold such information in confidence and Consortium remains responsible for the disclosure of such information.

G. Payment Terms.

All fees and charges are due and payable 30 days from the date of the related invoice. NetLibrary or Consortium has the right to charge 1.5% interest per month on any invoice that remains unpaid longer than 30 days from the date of the invoice; in addition, NetLibrary may deny Consortium, Members, and Patrons access to Consortium's NL Website and Member's NL Website, if applicable, until the unpaid invoice is paid in full. Consortium will be solely responsible for remitting to NetLibrary all sums due pursuant to this Agreement. Consortium may determine the amounts that Members will pay Consortium for the Audio Book Licenses and Platform Services provided hereunder, and Consortium may collect such amounts from Members.

H. Other Provisions.

1. Entire Agreement. All exhibits referred to in this Agreement are incorporated in this Agreement by reference. Any modification or amendment to Section(s) B. and C of Exhibit A under Section II.H.2 below will also be incorporated in this Agreement by reference. This Agreement sets forth the entire agreement between the parties with respect to the subject matter of the Agreement, merges all discussions between them and supersedes and replaces any and every other prior or contemporaneous agreement, understanding or negotiation that may have existed between NetLibrary and Consortium to the extent that any such agreement relates to the subject matter of the Agreement. This Agreement governs all orders for Audio Books and Platform Services placed by Consortium for the Shared Collection during the Term.

2. **Modification or Amendment.** Notwithstanding any other provision in this Agreement, NetLibrary will have the right to modify and amend Section(s) B. and C of Exhibit A to this Agreement provided that NetLibrary provides Consortium with at least 30 days prior written notice; and, in this event, the modified or amended Exhibit(s) will not be effective before the end of the 30 day notice period. Any other modification or amendment of this Agreement must be in writing and signed by a duly authorized representative of each party. For clarification, no term contained in a purchase order or other similar document submitted to NetLibrary by Consortium or any Member will become binding on the parties unless and until the term is mutually agreed upon in a written modification or amendment to this Agreement as described above.
3. **Assignment.** Neither party may sell, assign, transfer or convey this Agreement or any rights and obligations without the prior written consent of the other party, which will not be unreasonably withheld. Notwithstanding the foregoing, NetLibrary reserves the right to assign or transfer this Agreement to an affiliated company or to a third party that acquires substantially all of its assets upon written notice to the Consortium.
4. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.
5. **Governing Law, Jurisdiction and Venue.** This Agreement will be governed by the laws of the State of Colorado, U.S.A. without regard to any conflict of laws provisions contained in this Agreement. NetLibrary and Consortium agree that any action arising from or out of the negotiations, execution, interpretation or enforcement of this Agreement may be brought in the state or federal courts located in the State of Colorado, U.S.A. Consortium hereby consents to jurisdiction and venue in the state and federal courts in Colorado, U.S.A.
6. **Interpretation.** The use of headings in this Agreement is solely for the mutual convenience of the parties and will not affect the construction.
7. **Severability.** If any provision of this Agreement proves to be illegal, invalid or unenforceable, the remainder of this Agreement will not be affected thereby, and in lieu of any provision of this Agreement that is illegal, invalid or unenforceable, there will be added as a part of this Agreement a provision as similar in terms to the illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.
8. **Further Assurances.** Consortium and NetLibrary agree to take the further actions and to execute the further documents as may be necessary or appropriate to effectuate this Agreement and the transactions contemplated in this Agreement.
9. **Force Majeure.** Consortium acknowledges that the Internet is an unsecure, unstable, unregulated, unorganized and unreliable environment, and that the ability of NetLibrary to deliver Platform Services may depend upon the Internet and equipment, software, systems, data and services provided by various telecommunications carriers, equipment manufacturers, firewall providers, encryption system developers and other vendors and third parties. Neither party will be liable for, or have the right to terminate this Agreement as a result of, any delays or failures to perform any of its obligations under the Agreement to the extent that the delays or failures are due to circumstances beyond its reasonable control, including without limit acts of God; strikes;

riots; acts of war; power failures; and functions or malfunctions of the Internet, telecommunications services, firewalls, encryption systems, and security devices; or governmental regulations imposed after the Effective Date.

10. **Waiver.** The waiver by either party of any right granted under this Agreement will not be deemed a waiver of any other right granted under this Agreement, or a precedent for any subsequent waiver.
11. **No Partnership.** As to one another the parties are considered independent contractors. It is not the intention of the parties to create, nor will this Agreement be construed as creating, a partnership, joint venture, agency relationship, or other association; or render the parties liable as partners, co-venturers, agents, or principals.
12. **No Third Party Beneficiaries.** This Agreement is not intended to confer any benefit on any person or entity not a party to this Agreement.
13. **Notices.** Any notice, demand, request, consent, approval or other communication (collectively, "Notices") required or permitted to be given under this Agreement will be in writing and sent by hand delivery, special courier capable of confirming receipt, United States Mail (certified mail, return receipt requested), or facsimile or e-mail to a non-individual-specific e-mail address if receipt is confirmed. The parties acknowledge and agree that a Notice might not be deemed effective if receipt is not confirmed. Notices will be deemed given under the following rules: if hand delivered, at the time of delivery; if sent by special courier, on the third day after delivery to the courier; if mailed, on the seventh day after deposit in the United States Mail; and if sent by facsimile or e-mail to a non-individual-specific e-mail address, on the date transmitted if the sender receives confirmation that the transmission was received during the notified party's normal business hours, otherwise on the notified party's next normal business day. Notices will be sent to the following addresses:

	If to NL:	If to Consortium:
	NetLibrary, a division of OCLC Online Computer Library Center, Inc.	Montana State Library
Address:	4888 Pearl East Circle, Suite 103	PO Box 201800
Address:	Boulder, Colorado 80301	Helena, MT 59620- 1800
Attention:	Sales Management	Sarah McHugh
Telephone:	(303) 415-2548	406-444-9816
Facsimile:	(303) 381-8600	406-444-0266
e-mail address:	sales@netlibrary.com	samchugh@mt.gov

14. **Facsimile Copies.** A copy of the signed original of this Agreement transmitted by facsimile machine will be binding on both parties and have the same force and effect as the signed original.

EXHIBIT A TO CONSORTIUM AGREEMENT FOR AUDIO BOOK PURCHASES – PLATFORM FEE

A. Definitions.

1. **"Limiting Access Measures"** mean appropriate measures to limit the use of Audio Books through access by Patrons. Limiting Access Measures are to comply with NetLibrary's reasonable application requirements which may change from time to time and may include, but are not limited to, remote patron authentication applications, authentication through protected IP addresses, a patterned identification check and privileged user accounts. NetLibrary will consider other Limiting Access Measures on a case-by-case basis,

but may reject the proposed methods if, in NetLibrary's opinion, access will not be sufficiently controlled.

2. **"Platform Fee"** means the fee Consortium pays to maintain Consortium's NL Website and Member's NL Website, if applicable, and to maintain and upgrade the Existing Platform and bandwidth. Platform Fees include Platform Services. Consortium may pay the Platform Fee on the basis described in this Exhibit A.
3. **"Platform Services"** mean NetLibrary's services related to

Consortium's ongoing access to and use of Audio Books or Subscription(s) to Audio Books via the Internet and Consortium's NL Website and Member's NL Website, if applicable, as further described in this Exhibit A.

3. The "Reinstatement Fee" means the fee associated with reinstating Platform Services for an Audio Book for which Platform Services were previously terminated, as further described in this Exhibit A.

B. Annual Platform Fee.

1. The Annual Platform Fee for an order will equal 10% of the Audio Book List Price(s) for all the Audio Book(s) in the order at the time of initial licensing.
2. Upon payment of an Annual Platform Fee, NetLibrary will host and provide Platform Services for the effected Audio Books for 1 year from the purchase date.
3. The first payment of the Annual Platform Fee for an order will be due and payable at the time the Consortium purchases the Audio Book Licenses, and will be included on the invoice for the corresponding Audio Book License Fees.
4. NetLibrary may calculate and invoice Annual Platform Fees for the first year on an annualized basis. NetLibrary will calculate and invoice Annual Platform Fees for the second and subsequent years on an annualized basis on a single date each year.
5. The Reinstatement Fee for an Audio Book will equal 10% of the Audio Book List Price.
6. The Annual Platform Fee in the second and subsequent years will be reduced by the portion of the first year Annual Platform Fee attributable to any Audio Book removed from, and not reinstated to, Consortium's Audio Book collection as further described in this Exhibit A.
7. If NetLibrary elects not to continue to support the Existing Platform at any time due to technological obsolescence or cessation of third party vendor support, NetLibrary may charge Consortium additional fees for migrating the Audio Books for which Consortium is paying the Annual Platform Fee to a replacement platform, subject to any applicable limitations as set out on Exhibit A.

C. Platform Services

1. Provision and Delivery of Platform Services.
 - a. If Consortium has paid the Platform Fee; then, subject to the terms of this Agreement, Consortium will receive Platform Services.
 - b. Platform Services include:
 - i. establishing and administering Consortium's NL Website and Member's NL Websites, if appropriate,
 - ii. hosting the Audio Books or Audio Books Collection, as applicable, on Consortium's NL Website,
 - iii. providing management services for the Shared Collection(s), and
 - iv. providing access - to Consortium, Members, and Patrons - to Consortium's Audio Books or Audio Books Collection, as applicable, through Consortium's NL Website.
 - c. Consortium, Members, and Patrons will access Platform Services via Consortium's Internet connection or Member's Internet connection, as applicable, which will be Consortium's expense and responsibility or Member's expense and responsibility, as applicable.
 - d. NetLibrary will provide Platform Services for as long as Consortium continues to pay the Platform Fee, NetLibrary continues to support the Existing Platform, and Consortium has not notified NetLibrary to remove the Audio Books from Consortium's NL Website.
 - e. Removing and Reinstating Audio Books.
 - i. Consortium may elect to have any Audio Books removed from Consortium's NL Website, by providing NetLibrary with written notice of the election within 60 days of the annualized date on which Platform Fees are calculated and invoiced.

- ii. Consortium may elect to have any Audio Books reinstated to Consortium's NL Website, by providing NetLibrary with written notice of the election within 60 days of the annualized date on which Platform Fees are calculated and invoiced and by paying the applicable Reinstatement Fee as further described in Exhibit A. Platform Fees for reinstated Audio Books are due and payable on the reinstatement date.

- f. Notwithstanding any other provision of this Agreement, if NetLibrary terminates this Agreement for cause under Section II.A.2. of the Agreement, then NetLibrary's obligation to provide Audio Books and Platform Services will expire.

2. Support for NL Website and Consortium's NL Website.

- a. Existing Platform. At the time this Agreement is executed, the NL Website, the Consortium's NL Website, and the Member's NL Website are supported by NetLibrary's existing electronic bookshelf technology, which includes a third party operating system, third party database management software, and proprietary NetLibrary software (collectively, the "Existing Platform"). NetLibrary will not charge any fees to continue to support the operation of the Existing Platform, except as may be provided in this Agreement.
- b. Platform Commitment Date. Initially, the "Platform Commitment" Date will be July 1, 2012. However, NetLibrary may publish or announce a specific date as the Platform Commitment Date or a change in the practice of determining the Platform Commitment Date, provided that the publication or announcement will only be applicable to purchases of Audio Books licenses made after the date of the publication or announcement.
- c. Migration. If the Existing Platform becomes technologically obsolete and/or third party vendors cease to support third party components of the Existing Platform before the Platform Commitment Date; then, except as may be provided in this Agreement, NetLibrary will not charge Consortium any additional fees to support the Existing Platform until the Platform Commitment Date or to migrate Consortium's Audio Books to a replacement platform before the Platform Commitment Date. If the Existing Platform becomes technologically obsolete and/or third party vendors cease to support third party components of the Existing Platform after the Platform Commitment Date, then NetLibrary may charge fees to support a replacement platform or to migrate Consortium's Audio Books to a replacement platform.

3. Patron Access.

Consortium will implement and maintain Limiting Access Measures, based on NetLibrary's standard systems, which will control Consortium's, Members' and Patrons' access to Consortium's NL Website, and Members NL Website, if applicable.

4. Reports.

Payment of the Platform Fees entitles Consortium to the standard reports offered by NetLibrary. These reports may be modified by NetLibrary from time to time and may include without limit: current discount schedule, transaction history, owned Audio Books, popular Audio Books, Audio Books not owned, all Audio Books, new Audio Books, activity by subject area and activity by title. Nonstandard reports may be developed for a fee on a case-by-case basis.

D. Consortium and Patron Usage.

1. Limiting Access Measures. Consortium will be solely responsible for determining which Members will have access to Consortium's NL Website and Member's NL Website, as applicable, under this Agreement. Consortium and Members will be jointly responsible for determining which Patrons will have access to Consortium's NL Website and Member's NL Website, as applicable, under this Agreement. Consortium agrees to: (a) implement Limiting Access Measures within a reasonable time frame, (b) communicate to Members the requirement to implement Limiting Access Measures, and (c) reasonably assist NetLibrary in bringing a Member into compliance with Limiting Access Measures if the Member is discovered to be out of compliance.

NetLibrary, in its sole discretion, may discontinue Consortium's or a Member's access to Consortium's NL Website and Member's NL Website, as applicable, if Consortium or the Member fails to implement Limiting Access Measures within a reasonable timeframe. Except for standard fees charged by Consortium to Members and/or Patrons, neither Consortium nor Members will charge any Patron for use of Consortium's NL Website or Member's NL Website, if applicable.

2. Terms of Use. The use of Member's NL Website and Consortium's NL Website, as applicable, by Consortium, Members, and Patrons will be governed by the "Terms of Use" currently available at <http://www.netlibrary.com/TermsOfUse.aspx>, as they may be amended from time to time, which are incorporated in this Agreement by reference. If a Consortium, a Member, or a Patron violates the Terms of Use, NetLibrary reserves the right, in its sole discretion, to suspend or terminate Consortium's, the Member's, or the Patron's access to and use of Consortium's NL Website and Member's NL Website, as applicable. At its sole option, NetLibrary may notify Consortium of any violation by a Member or a Patron of the Terms of Use, and in the event, also at its sole option, NetLibrary may grant Consortium three days to attempt to correct the violation by a Member or a Patron and NetLibrary will not terminate the Member's or Patron's access to and use of Consortium's NL Website and Member's NL Website if the violation is corrected within the three day period. Consortium acknowledges and agrees that, in the case of repeated or persistent violations, NetLibrary may not provide the aforementioned notice and correction period to Consortium. Repeated or persistent violations of the Terms of Use by Consortium, Members, or Patrons may be cause for termination of this Agreement by NetLibrary.
3. Tools. Neither Consortium nor Members, if applicable, will use, implement or authorize use of any computerized or automated tool or application to search, index, test or otherwise obtain information from Consortium's NL Website and Member's NL Website, as applicable, including without limit any "spidering" or web crawler application (collectively, "Tools"), without obtaining the prior written approval of NetLibrary. NetLibrary will not unreasonably withhold this approval, provided that the proposed use of Tools does not (i) present a risk of interfering with use of NL Website by Members, Patrons or other NetLibrary end-users; (ii) degrade or impair the performance of NL Website; (iii) cause NetLibrary to violate its agreements with its other end-users, its

publishers or other third parties; or (iv) constitute a violation of applicable law, including without limit U.S. copyright law. Consortium acknowledges and agrees that NetLibrary may from time to time implement controls on Consortium's NL Website and Member's NL Website, if applicable, to regulate or restrict the use of Tools.

E. Member Access.

1. Shared Collection(s) Access. NetLibrary will only permit access to and use of a Shared Collection(s) by a Member of Consortium and the Member's Patrons if:
 - a. Consortium has executed a Consortium Agreement with NetLibrary,
 - b. Consortium has given NetLibrary written notice that Consortium is willing to allow the Member to access a particular Shared Collection, and
 - c. the Member has executed a Library Audio Book Agreement with NetLibrary.Until all of these conditions have been satisfied, NetLibrary will have no obligation to permit any Member of Consortium to access any Shared Collection of Consortium.
2. Shared Collection(s) Parameters. At the time of purchase the Shared Collection closes. NetLibrary will provide access to this Shared Collection to the Members that Consortium has authorized to access the Shared Collection by giving NetLibrary written notice within 30 days after the Shared Collection closes. NetLibrary will not provide access to this Shared Collection to any Members that Consortium has not authorized to access the Shared Collection by giving NetLibrary written notice within 30 days after the Shared Collection closes.
3. Unique Collection. Though Consortium Members for whom Consortium has not given NetLibrary written notice are not permitted to access the Shared Collection(s), Consortium and some number of its Members can purchase additional Audio Books on a shared basis by purchasing another Shared Collection. Members can also purchase a Unique Collection.
4. Notice Requirements. In addition to giving NetLibrary written notice that Consortium is willing to allow a Member to access a particular Shared Collection, Consortium will provide for NetLibrary any individual information needed to identify the Member(s) and to provide them and their Patrons access to the Shared Collection.

EXHIBIT B TO CONSORTIUM AGREEMENT FOR AUDIO BOOK PURCHASES – GUIDELINES FOR THE USE AND TRANSFER OF OCLC-DERIVED RECORDS

REVISION OF NOVEMBER 16, 1987

I. GUIDELINES

(See Definitions in Part II below)

1. Each member and nonmember library may use records without restriction, and may transfer records of its own holdings without restriction to other libraries.
2. In addition to transfers to libraries, each member and nonmember library may transfer records of its own holdings without restriction, to
 - (a) member networks, (b) state and multi-state library agencies and (c) all other noncommercial firms.
 - a. Member networks may produce and transfer to any member library, copies on magnetic tape of records used or inserted into the OCLC database by the library. Each member network also may process records of the holdings of any member or nonmember library which has employed and agreed to pay it for that service, provided the member network has first signed either an individual agreement with the library, or a general agreement with OCLC, containing measures agreed upon by OCLC and the member network for protection of the records it has been employed to process. Any other use and transfer of records by member networks will be as provided in separate understandings with OCLC.
 - b. The use and transfer of records by library systems or projects operated by or under the aegis of one or more state or national library agencies will be as provided in separate understandings with OCLC. Such understandings may include (i) arrangements to incorporate state or national bibliographic databases into the OCLC system, (ii) paid-up licenses to use records in state or national programs (e.g., by means of payments for OCLC multi-institution tapes) and/or (iii) any other understandings that will facilitate state or national programs as well as the maintenance and enhancement of the OCLC database.
 - c. The use and transfer of records by any other organizations to which transfers are made under this Guideline 2 will be as provided in separate understandings with OCLC.
3. In addition, each member and nonmember library may transfer records of its own holdings to commercial firms which the library has employed and agreed to pay to process such records, provided that each commercial firm has first signed an individual agreement with the library, or OCLC has advised the library that the commercial firm has signed a general agreement with OCLC, in either case containing measures agreed upon by OCLC and the commercial firm for protection of the records it has been employed to process. In addition, each member and nonmember library may make any other transfers of records to commercial firms, subject to prior written agreements with OCLC. However, there is no requirement for prior written agreements (a) for transfers made under Guideline 1 above to libraries operated by commercial firms or (b) for transfers to commercial firms by former OCLC member libraries of records of their holdings, so long as the libraries maintain no continuing user status with OCLC.
4. When a nonmember organization makes bibliographic information available to OCLC which is subject to usage or transfer restrictions imposed by such nonmember organization, and OCLC nevertheless elects to accept the information for addition to the OCLC database, OCLC will notify libraries to which it makes the information available, and rights to use and transfer records based on such information will be subject to the same restrictions.
5. When transfers under Guideline 1 above are made to machine-readable union catalogs accessible by nonmember libraries, it is requested that machine-readable copies of the records of such union catalogs be submitted to OCLC. OCLC, at its own expense, will have the right to add such records to its database for all uses consistent with its chartered purposes.
6. The Guidelines above apply to all uses and transfers of records except where a mutually acceptable agreement establishing broader or narrower rights is made with OCLC relating to a specific product or service.

II. DEFINITIONS

1. The term "member library" means a general member of OCLC as defined in its Code of Regulations.
2. The term "nonmember library" means any library other than a member library.
3. A "member network" is an OCLC-affiliated regional, state or multi-state library network organization which is in contract with OCLC to provide OCLC services and products, or to assist OCLC to provide such services and products, to general members of OCLC.
4. A "commercial firm" is any organization permitted, under applicable law, to operate on a for-profit basis.
5. The term "records" means bibliographic records and holdings data (including copies thereof) derived from the OCLC database, including derivative works made from such records, and either received in machine-readable form or converted by the transferee into machine-readable form. The term also includes such records when held only in eye-readable form, in the case of proposed transfers to commercial firms. However, records do not include, as to any member or nonmember library (a) bibliographic records designated in the OCLC database as original cataloging by such member or nonmember library and (b) bibliographic records derived by such member or nonmember library from sources other than the OCLC database and to copies of which in the OCLC database its holdings symbol has been attached by tapeloading. Such excluded records are freely transferable and are not dealt with in these Guidelines. OCLC-derived records held only in eye-readable form are freely transferable except to commercial firms.
6. The terms "transfer" and "transfer of records" refer to all sales, exchanges, gifts, sharing and other transfers, and all online access except online access provided to end-user patrons of a library in authorized possession of the records.

EXHIBIT C TO CONSORTIUM AGREEMENT FOR AUDIO BOOK PURCHASES - CONSORTIUM'S MEMBERS

As of __/__/07

EXHIBIT D TO CONSORTIUM AGREEMENT FOR AUDIO BOOK PURCHASES - LIBRARY AUDIO BOOK AGREEMENT

MONTANA STATE LIBRARY MEMBER TERMS AND CONDITIONS

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, to be effective as of the Effective Date, as set forth below.

Member: _____
 By: _____
 Name: _____
 Title: _____
 Date: _____

NetLibrary: NetLibrary, a division of OCLC Online
 Computer Library Center, Inc. _____
 By: _____
 Name: Rick Schwieterman _____
 Title: Vice President and Chief Financial
 Officer _____
 Date: _____

THIS LIBRARY AGREEMENT FOR AUDIO BOOK PURCHASES (this "Agreement") is by and between _____, ("Member") and **NetLibrary**, a division of OCLC Online Computer Library Center, Inc., an Ohio nonprofit corporation ("NetLibrary").

WHEREAS, NetLibrary has acquired certain rights to convert various books and other works to electronic format and to market and distribute the works as converted as Audio Books, and NetLibrary operates an electronic library service for hosting and managing Audio Books and other materials over the Internet.

WHEREAS, NetLibrary and Montana State Library ("Consortium") have entered into a consortium Audio Book agreement (the "Consortium Audio Book Agreement").

WHEREAS, Consortium has given NetLibrary written notice that Consortium is willing to allow Member to access a particular Shared Collection and Member has been designated a "Member" of Consortium as defined in the Consortium Audio Book Agreement (for clarification, capitalized terms used herein and not defined herein will have the meanings assigned to them in the applicable Consortium Audio Book Agreement).

WHEREAS, Member desires to purchase licenses to certain Audio Books, as part of the discrete Shared or Unique Collection; subject to the terms and conditions described in this Agreement.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND OBLIGATIONS SET FORTH BELOW, the parties agree as follows.

I. DEFINITIONS; AUDIO BOOK LICENSES

A. Definitions.

Terms defined within this Agreement have the respective meanings attributed to them throughout this Agreement or in this Section I.A. Any defined term may be used in the singular and in the plural, as appropriate in the context.

1. "Audio Books" mean NetLibrary's electronic versions of certain Audio Books and other works in which NetLibrary has acquired certain rights.
2. The "Audio Books License" means a license to use the relevant Audio Books(s).
3. The "Audio Books License Fee" means a one-time-only fee for Member's license to use the relevant Audio Books(s) and is determined by subtracting the applicable Discount from the Audio Books List Price.
4. The "Audio Books List Price" means the price established by NetLibrary for the license to use the relevant Audio Books(s).
5. "Discount" means the percentage of the Audio Books List Price used in determining the Audio Books License Fee. Discounts do not apply to Platform Services.
6. The "Effective Date" of this Agreement means the latest execution date set forth on the signature block below or the date on which Member or any Patron may first access Audio Books, whichever date occurs first.
7. "Member's NL Website" means the Website operated by NetLibrary and open to Member and Patrons in order to access and use Audio Books licensed to Member.

8. A "MARC Record" means an electronic record containing metadata and other relevant information about the corresponding Audio Book.
9. "NL Website" means the Website operated by NetLibrary and open to the general public in order to provide information about NetLibrary's products and services.
10. "Patrons" mean Member's registered faculty, members, patrons, students, and other authorized users, including both onsite users and remote users. Patrons are individuals and may not be corporations or other entities.
11. The "Shared Collection(s)" means a collection(s) of Audio Books licensed to Consortium for access and use by Consortium and its participating Members and Patrons (as such terms are defined in the applicable Consortium Audio Book Agreement) under the terms and conditions of the Consortium Audio Book Agreement with respect to Shared Collection(s) and this Agreement; nothing in this Agreement is intended to grant Member any rights in the Shared Collection(s) without completion of appropriate paperwork and payment of related fees.
12. Subject to Section II.A below, the "Term" of this Agreement includes an "Initial Term," which commences on the Effective Date and continues in effect for one year, and any "Renewal Term(s)," which are automatic one year extensions of this Agreement that commence on each anniversary of the Effective Date unless this Agreement is terminated according to Section II.A.1 below.
13. A "Unique Collection" means a collection of Audio Books chosen by a Member and licensed to the Member under the terms and conditions of this Agreement. The Unique Collection remains separate from the Shared Collection(s). The Unique Collection is only accessible by Member and its Patrons; the Unique Collection is not accessible by Consortium or by nonpurchasing Members and Patrons (as such terms are defined in the applicable Consortium Audio Book Agreement).

B. Audio Book Licenses.

1. Purchase of Licenses.

a. Audio Books.

- i. During the Term of the Agreement, Member may select and purchase Audio Book Licenses in accordance with NetLibrary's then current ordering practices. NetLibrary will make the Audio Books Licenses available to Member according to NetLibrary's agreements with its content providers, and partners. Each final order of Audio Book Licenses is incorporated in this Agreement by reference.
- ii. Member designates Consortium as its agent for acquiring rights to Audio Books on behalf of Member under the Consortium Audio Book Agreement and with the authority to act, including without limit ordering Audio Books, on behalf of Member under this Agreement and the Consortium Audio Book Agreement. NetLibrary is authorized to rely on this designation and to recognize Consortium as an agent of Member. Member agrees to comply with and be bound by all the provisions of the Consortium Audio Book Agreement applicable to "Members" as defined in the Consortium Audio Book Agreement.

- b. MARC Records. As part of the relevant Platform Fee; NetLibrary will provide Member with one copy of the MARC Record that corresponds to each Audio Books License purchased by Member for the Unique Collection. NetLibrary and Member agree that all MARC Records are the property of OCLC; Member may use MARC Records only for its own internal purposes as further described in Exhibit B. NetLibrary will replace defective MARC Records if Member notifies NetLibrary of the defect within 90 days of NetLibrary's delivery of the MARC Record to Member and NetLibrary concurs that the MARC Record is defective.

2. Copyrighted Works. Member acknowledges and agrees that the copyright to each Audio Book is owned by or licensed to NetLibrary and the respective publisher thereof. All Rights

Reserved. By purchasing a license to an Audio Book, Member obtains certain rights to access and use a copy of the Audio Book under this Agreement, but Member does not obtain or own any rights in the copyrights or any other intellectual property rights that may be associated with the Audio Book. Member agrees that it is responsible for all use of Audio Books by Member and its Patrons, and that any use of Audio Books by Member and its Patrons is governed by and will comply with applicable laws, including without limit U.S. copyright laws. Member acknowledges that it and its Patrons have no right to make copies of any Audio Book, or any portions thereof, except to the extent permitted by applicable copyright laws and neither it nor Patrons have any right to grant any third parties the right to use any Audio Book (for purposes of this sentence, third parties does not include Patrons).

II. GENERAL PROVISIONS

A. Termination.

1. Termination Without Cause. Either party may terminate this Agreement without cause effective upon the conclusion of the then current Initial Term or Renewal Term, as applicable, by providing the other party with at least 60 days prior written notice of its intent to do so.
2. Termination for Cause. Either party may terminate this Agreement for cause at any time by providing the other party with prior written notice of the occurrence of any of the following events:
 - a. a party fails to timely pay any amounts due and payable, provided that the nonpayment is not cured within 10 days of the notice; or
 - b. a party violates any material provision of this Agreement, including without limit a material failure to provide required services, a breach by Member or Patrons of copyrights laws, failure to comply with any security documents or a breach of the confidentiality provisions of this Agreement, or otherwise has committed breaches of this Agreement that, in the aggregate, are material, provided that the breach(es) cannot be, or is(are) not, cured within 60 days of the notice.
3. Survival. All terms of this Agreement that are intended to survive termination for any reason of this Agreement will so survive, including without limit Section I.B.2; Section(s) II.B, C, D, E, F, G, H.5 and H.13; and Section D of Exhibit A.

B. Limited Warranty.

NetLibrary warrants that, as to any Audio Books licensed to Member under this Agreement, NetLibrary has the necessary authority to license the Audio Books to Member and to provide Platform Services to Member. NetLibrary warrants that it will use its commercially reasonable efforts to provide Platform Services as described in this Agreement.

C. Warranty Disclaimer.

EXCEPT AS EXPRESSLY PROVIDED IN SECTION II.B ABOVE, MEMBER'S NL WEBSITE, PLATFORM SERVICES, AND AUDIO BOOKS LICENSED UNDER THIS AGREEMENT ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND AND NETLIBRARY, ITS CONTENT PROVIDERS, AND CONSORTIUM EXPRESSLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMIT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER NETLIBRARY, ITS CONTENT PROVIDERS, NOR CONSORTIUM WARRANTS, GUARANTEES OR MAKES ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF MEMBER'S NL WEBSITE OR AUDIO BOOKS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY NETLIBRARY OR CONSORTIUM OR EMPLOYEES OF EITHER PARTY WILL CREATE A REPRESENTATION OR WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF NETLIBRARY'S OBLIGATIONS, AND MEMBER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.

D. Indemnity.

NetLibrary will defend, indemnify, and hold Member harmless from any action based solely on a claim that Audio Books furnished and used within the scope of this Agreement infringe any copyright of any third party, except that this indemnity will not apply to copyright claims arising from content that has been provided to NetLibrary by publishers and is provided by NetLibrary without substantive modification (except for conversion to digital format). Member will defend, indemnify, and hold NetLibrary harmless from any action based on a claim that the use by Member or its Patrons of Member's NL Website, Consortium's NL Website or Audio Books in violation of the terms of this Agreement infringes any copyrights or trade secrets of any third party.

E. Limitation on Liability.

Neither party will claim special, incidental, indirect, or consequential damages; including without limit lost profits, for breach of this Agreement. This limitation will also apply to any claims brought against NetLibrary's content providers. Remedies are limited to claims for amounts due, for injunctive relief only as provided, or for direct damages. A party's aggregate liability for any and all claims, losses, liabilities, and demands arising, whether for breach of contract, in tort or otherwise, are limited to the total amount of eAudio Book License Fees, and Platform Fees (collectively, "Fees") paid by Member to NetLibrary, during the 12 month period immediately preceding the date on which the claim first arose. Notwithstanding any other provision of this Agreement, the nonbreaching party may seek injunctive relief in any court of competent jurisdiction to enjoin or restrain the breaching party from continuing to do any act or commit any violation or threatened violation of this Agreement, and the prevailing party, if any, on a claim for injunctive relief is entitled to recover its reasonable attorney fees incurred in connection with that proceeding. Injunctive relief will be without prejudice to the nonbreaching party's right to also seek money damages for breach of this Agreement.

F. Confidential Information.

To the extent allowed by applicable law, Member agrees that it will not use or disclose information relating to (i) the terms of this Agreement, (ii) the content of reports delivered under this Agreement, (iii) pricing terms and other business arrangements governed by this Agreement and (iv) any other documents provided by NetLibrary that have a confidential, proprietary or other similar designation or should reasonably be believed to be the confidential or proprietary information of NetLibrary or its content providers. Notwithstanding the foregoing, Member may disclose the aggregated content of reports delivered under Ex.A.C.4 to other library professionals.

G. Payment Terms.

At NetLibrary's discretion, either NetLibrary or Consortium may invoice Member for any fees and other charges due for the purchase of Member's Unique Collection(s) under this Agreement. Consortium will bill Member for amounts due with respect to Shared Collections. All fees and charges are due and payable 30 days from the date of the related invoice. NetLibrary or Consortium has the right to charge 1.5% interest per month on any invoice that remains unpaid longer than 30 days from the date of the invoice; in addition, NetLibrary may deny Member and Patrons access to Member's NL Website or Consortium's NL Website until the unpaid invoice is paid in full.

H. Other Provisions.

1. Entire Agreement. All exhibits referred to in this Agreement are incorporated in this Agreement by reference. Any modification or amendment to Section(s) B. and C of Exhibit A under Section II.H.2 below will also be incorporated in this Agreement by reference. This Agreement sets forth the entire agreement between the parties with respect to the subject matter of the Agreement, merges all discussions between them and supersedes and replaces any and every other prior or contemporaneous agreement, understanding or negotiation that may have existed between NetLibrary and Member to the extent

that any such agreement relates to the subject matter of the Agreement. This Agreement governs all orders for Audio Books and Platform Services placed by Member during the Term.

2. Modification or Amendment. Notwithstanding any other provision in this Agreement, NetLibrary will have the right to modify and amend Section(s) B. and C of Exhibit A to this Agreement provided that NetLibrary provides Member with at least 30 days prior written notice; and, in this event, the modified or amended Exhibit(s) will not be effective before the end of the 30 day notice period. Any other modification or amendment of this Agreement must be in writing and signed by a duly authorized representative of each party. For clarification, no term contained in a purchase order or other similar document submitted to NetLibrary by Member will become binding on the parties unless and until the term is mutually agreed upon in a written modification or amendment to this Agreement as described above.

3. Assignment. Neither party may sell, assign, transfer or convey this Agreement or any rights and obligations without the prior written consent of the other party, which will not be unreasonably withheld. Notwithstanding the foregoing, NetLibrary reserves the right to assign or transfer this Agreement to an affiliated company or to a third party that acquires substantially all of its assets upon written notice to the Member.

4. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.

5. Governing Law, Jurisdiction and Venue. This Agreement will be governed by the laws of the State of Colorado, U.S.A. without regard to any conflict of laws provisions contained in this Agreement. NetLibrary and Member agree that any action arising from or out of the negotiations, execution, interpretation or enforcement of this Agreement may be brought in the state or federal courts located in the State of Colorado, U.S.A. Member hereby consents to jurisdiction and venue in the state and federal courts in Colorado, U.S.A.

6. Interpretation. The use of headings in this Agreement is solely for the mutual convenience of the parties and will not affect the construction.

7. Severability. If any provision of this Agreement proves to be illegal, invalid or unenforceable, the remainder of this Agreement will not be affected thereby, and in lieu of any provision of this Agreement that is illegal, invalid or unenforceable, there will be added as a part of this Agreement a provision as similar in terms to the illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

8. Further Assurances. Member and NetLibrary agree to take the further actions and to execute the further documents as may be necessary or appropriate to effectuate this Agreement and the transactions contemplated in this Agreement.

9. Force Majeure. Member acknowledges that the Internet is an unsecure, unstable, unregulated, unorganized and unreliable environment, and that the ability of NetLibrary to deliver Platform Services may depend upon the Internet and equipment, software, systems, data and services provided by various telecommunications carriers, equipment manufacturers, firewall providers, encryption system developers and other vendors and third parties. Neither party will be liable for, or have the right to terminate this Agreement as a result of, any delays or failures to perform any of its obligations under the Agreement to the extent that the delays or failures are due to circumstances beyond its reasonable control, including without limit acts of God; strikes; riots; acts of war; power failures; and functions or malfunctions of the Internet, telecommunications services, firewalls, encryption systems, and security devices; or governmental regulations imposed after the Effective Date.

10. Waiver. The waiver by either party of any right granted under this Agreement will not be deemed a waiver of any other right granted under this Agreement, or a precedent for any subsequent waiver.

11. No Partnership. As to one another the parties are considered independent contractors. It is not the intention of the parties to

create, nor will this Agreement be construed as creating, a partnership, joint venture, agency relationship, or other association; or render the parties liable as partners, co-venturers, agents, or principals.

12. No Third Party Beneficiaries. This Agreement is not intended to confer any benefit on any person or entity not a party to this Agreement.
13. Notices. Any notice, demand, request, consent, approval or other communication (collectively, "Notices") required or permitted to be given under this Agreement will be in writing and sent by hand delivery, special courier capable of confirming receipt, United States Mail (certified mail, return receipt requested), or facsimile or e-mail to a non-individual-specific e-mail address if receipt is confirmed. The parties acknowledge and agree that a Notice might not be deemed effective if receipt is not confirmed. Notices will be deemed given under the following rules: if hand delivered, at the time of delivery; if sent by special courier, on the third day after delivery to the courier; if mailed, on the seventh day after deposit in the United States Mail; and if sent by facsimile or e-mail to a non-individual-specific e-mail address, on the date transmitted if the sender receives confirmation that the transmission was received during the notified party's normal business hours, otherwise on the notified party's next normal business day. Notices will be sent to the following addresses:

	If to NL:	If to Member:
	NetLibrary, a division of OCLC Online Computer Library Center, Inc.	
Address:	4888 Pearl East Circle, Suite 103	
Address:	Boulder, Colorado 80301	
Attention:	Sales Management	
Telephone:	(303) 415-2548	
Facsimile:	(303) 381-8600	
e-mail address:	sales@netlibrary.com	

14. Facsimile Copies. A copy of the signed original of this Agreement transmitted by facsimile machine will be binding on both parties and have the same force and effect as the signed original.

EXHIBIT A TO LIBRARY AGREEMENT FOR AUDIO BOOK PURCHASES – PLATFORM FEE

A. Definitions.

4. "Limiting Access Measures" mean appropriate measures to limit the use of Audio Books through access by Patrons. Limiting Access Measures are to comply with NetLibrary's reasonable application requirements which may change from time to time and may include, but are not limited to, remote patron authentication applications, authentication through protected IP addresses, a patterned identification check and privileged user accounts. NetLibrary will consider other Limiting Access Measures on a case-by-case basis, but may reject the proposed methods if, in NetLibrary's opinion, access will not be sufficiently controlled.
5. "Platform Fee" means the fee Member pays to maintain Member's NL Website and to maintain and upgrade the Existing Platform and bandwidth. Platform Fees include Platform Services. Member may pay the Platform Fee on the basis described in this Exhibit A.
6. "Platform Services" mean NetLibrary's services related to Member's ongoing access to and use of Audio Books or Subscription(s) to Audio Books via the Internet and Member's NL Website, as further described in this Exhibit A.
3. The "Reinstatement Fee" means the fee associated with reinstating Platform Services for an Audio Book for which Platform Services were previously terminated, as further described in this Exhibit A.

B. Annual Platform Fee.

1. The Annual Platform Fee for an order will equal 10% of the Audio Book List Price(s) for all the Audio Book(s) in the order at the time of initial licensing.
2. Upon payment of an Annual Platform Fee, NetLibrary will host and provide Platform Services for the effected Audio Books for 1 year from the purchase date.
3. The first payment of the Annual Platform Fee for an order will be due and payable at the time the Member purchases the Audio Book Licenses, and will be included on the invoice for the corresponding Audio Book License Fees.
4. NetLibrary will calculate and invoice Annual Platform Fees for the second and subsequent years on an annualized basis on a single date each year.
5. The Reinstatement Fee for an Audio Book will equal 10% of the Audio Book List Price.
6. The Annual Platform Fee in the second and subsequent years will be reduced by the portion of the first year Annual Platform Fee

attributable to any Audio Book removed from, and not reinstated to, Member's Audio Book collection as further described in this Exhibit.

7. If NetLibrary elects not to continue to support the Existing Platform at any time due to technological obsolescence or cessation of third party vendor support, NetLibrary may charge Member additional fees for migrating the Audio Books for which Member is paying the Annual Platform Fee to a replacement platform, subject to any applicable limitations as set out on Exhibit A.

C. Platform Services

1. Provision and Delivery of Platform Services.

- a. If Member has paid the Platform Fee; then, subject to the terms of this Agreement, Member will receive Platform Services.
- b. Platform Services include:
 - i. establishing and administering Member's NL Website,
 - ii. hosting the Audio Books or Audio Books Collection, as applicable, on Member's NL Website, and
 - iii. providing access - to Member and Patrons - to Member's Audio Books or Audio Books Collection, as applicable, through Member's NL Website.
- c. Member and Patrons will access Platform Services via Member's Internet connection, which will be Member's expense and responsibility.
- d. NetLibrary will provide Platform Services for as long as Member continues to pay the Platform Fee, NetLibrary continues to support the Existing Platform, and Member has not notified NetLibrary to remove the Audio Books from Member's NL Website.
- e. Removing and Reinstating Audio Books.
 - i. Member may elect to have any Audio Books removed from Member's NL Website, by providing NetLibrary with written notice of the election within 60 days of the annualized date on which Platform Fees are calculated and invoiced.
 - ii. Member may elect to have any Audio Books reinstated to Member's NL Website, by providing NetLibrary with written notice of the election within 60 days of the annualized date on which Platform Fees are calculated and invoiced and by paying the applicable Reinstatement Fee as further described in Exhibit A. Platform Fees for reinstated Audio Books are due and payable on the reinstatement date.

- f. Notwithstanding any other provision of this Agreement, if NetLibrary terminates this Agreement for cause under Section II.A.2. of the Agreement, then NetLibrary's obligation to provide Audio Books and Platform Services will expire.

2. Support for NL Website and Member's NL Website.

- a. Existing Platform. At the time this Agreement is executed, the NL Website, the Member's NL Website, and the Consortium's NL Website are supported by NetLibrary's existing electronic bookshelf technology, which includes a third party operating system, third party database management software, and proprietary NetLibrary software (collectively, the "Existing Platform"). NetLibrary will not charge any fees to continue to support the operation of the Existing Platform, except as may be provided in this Agreement.
- b. Platform Commitment Date. Initially, the "Platform Commitment" Date will be July 1, 2012. However, NetLibrary may publish or announce a specific date as the Platform Commitment Date or a change in the practice of determining the Platform Commitment Date, provided that the publication or announcement will only be applicable to purchases of Audio Books licenses made after the date of the publication or announcement.
- c. Migration. If the Existing Platform becomes technologically obsolete and/or third party vendors cease to support third party components of the Existing Platform before the Platform Commitment Date; then, except as may be provided in this Agreement, NetLibrary will not charge Member any additional fees to support the Existing Platform until the Platform Commitment Date or to migrate Member's Audio Books content to a replacement platform before the Platform Commitment Date. If the Existing Platform becomes technologically obsolete and/or third party vendors cease to support third party components of the Existing Platform after the Platform Commitment Date, then NetLibrary may charge fees to support a replacement platform or to migrate Member's Audio Books to a replacement platform.

3. Patron Access.

Member will implement and maintain Limiting Access Measures, based on NetLibrary's standard systems, which will control Patrons' access to Member's NL Website.

4. Reports.

Payment of the Platform Fees entitles Member to the standard reports offered by NetLibrary. These reports may be modified by NetLibrary from time to time and may include without limit: current discount schedule, transaction history, owned Audio Books, popular Audio Books, Audio Books not owned, all Audio Books, new Audio Books, activity by subject area and activity by title. Nonstandard reports may be developed for a fee on a case-by-case basis.

D. Member and Patron Usage.

1. Limiting Access Measures. Member will be solely responsible for determining which Patrons will have access to Member's NL Website. Member and Consortium will be jointly responsible for determining which Patrons will have access to Consortium's NL Website, as applicable, under this Agreement. Member agrees to implement Limiting Access Measures within a reasonable time frame. NetLibrary, in its sole discretion, may discontinue Member's access to Member's NL Website and Consortium's NL Website, as applicable, if Member fails to implement Limiting Access Measures within a reasonable timeframe. Except for

standard fees charged by Member to Patrons, Member will not charge any Patron for use of Member's NL Website.

2. Terms of Use. The use of Member's NL Website and Consortium's NL Website, as applicable, by Member and Patrons will be governed by the "Terms of Use" currently available at <http://www.netlibrary.com/TermsOfUse.aspx>, as they may be amended from time to time, which are incorporated in this Agreement by reference. If a Member or a Patron violates the Terms of Use, NetLibrary reserves the right, in its sole discretion, to suspend or terminate Member's or the Patron's access to and use of Member's NL Website and Consortium's NL Website, as applicable. At its sole option, NetLibrary may notify Member of any violation by a Patron of the Terms of Use, and in the event, also at its sole option, NetLibrary may grant Member three days to attempt to correct the violation by a Patron and NetLibrary will not terminate the Patron's access to and use of Member's NL Website and Consortium's NL Website if the violation is corrected within the three day period. Member acknowledges and agrees that, in the case of repeated or persistent violations, NetLibrary may not provide the aforementioned notice and correction period to Member. Repeated or persistent violations of the Terms of Use by Member or Patrons may be cause for termination of this Agreement by NetLibrary.

3. Tools. Member will not use, implement or authorize use of any computerized or automated tool or application to search, index, test or otherwise obtain information from Member's NL Website and Consortium's NL Website, as applicable, including without limit any "spidering" or web crawler application (collectively, "Tools"), without obtaining the prior written approval of NetLibrary. NetLibrary will not unreasonably withhold this approval, provided that the proposed use of Tools does not (i) present a risk of interfering with use of NL Website by Patrons or other NetLibrary end-users; (ii) degrade or impair the performance of NL Website; (iii) cause NetLibrary to violate its agreements with its other end-users, its publishers or other third parties; or (iv) constitute a violation of applicable law, including without limit U.S. copyright law. Member acknowledges and agrees that NetLibrary may from time to time implement controls on Member's NL Website to regulate or restrict the use of Tools.

4. Shared Collections.

- a. Shared Collection(s) Access. NetLibrary will only permit access to and use of Consortium's Shared Collection(s) by a Consortium Member and the Member's Patrons if: (i) Consortium has executed a Consortium Agreement with NetLibrary, (ii) Consortium has given NetLibrary written notice that Consortium is willing to allow the Member to access a particular Shared Collection, and (iii) the Consortium Member has executed an Agreement. Until all of these conditions have been satisfied, NetLibrary will have no obligation to permit any Member of Consortium to access any Shared Collection of Consortium.

- b. Shared Collection(s) Parameters. At the time of purchase the Shared Collection closes. NetLibrary will provide access to a Consortium Shared Collection to a Consortium Member that Consortium has authorized to access the Consortium Shared Collection by giving NetLibrary written notice within 30 days after the Consortium Shared Collection closes. NetLibrary will not provide access to a Consortium Shared Collection to any Members that Consortium has not authorized to access the Shared Collection by giving NetLibrary written notice within 30 days after the Shared Collection closes.

EXHIBIT B TO LIBRARY AGREEMENT FOR AUDIO BOOK PURCHASES – GUIDELINES FOR THE USE AND TRANSFER OF OCLC-DERIVED RECORDS

Revision of November 16, 1987

I. GUIDELINES

(See Definitions in Part II below)

1. Each member and nonmember library may use records without restriction, and may transfer records of its own holdings without restriction to other libraries.
2. In addition to transfers to libraries, each member and nonmember library may transfer records of its own holdings without restriction, to (a) member networks, (b) state and multi-state library agencies and (c) all other noncommercial firms.
 - a. Member networks may produce and transfer to any member library, copies on magnetic tape of records used or inserted into the OCLC database by the library. Each member network also may process records of the holdings of any member or nonmember library which has employed and agreed to pay it for that service, provided the member network has first signed either an individual agreement with the library, or a general agreement with OCLC, containing measures agreed upon by OCLC and the member network for protection of the records it has been employed to process. Any other use and transfer of records by member networks will be as provided in separate understandings with OCLC.
 - b. The use and transfer of records by library systems or projects operated by or under the aegis of one or more state or national library agencies will be as provided in separate understandings with OCLC. Such understandings may include (i) arrangements to incorporate state or national bibliographic databases into the OCLC system, (ii) paid-up licenses to use records in state or national programs (e.g., by means of payments for OCLC multi-institution tapes) and/or (iii) any other understandings that will facilitate state or national programs as well as the maintenance and enhancement of the OCLC database.
 - c. The use and transfer of records by any other organizations to which transfers are made under this Guideline 2 will be as provided in separate understandings with OCLC.
3. In addition, each member and nonmember library may transfer records of its own holdings to commercial firms which the library has employed and agreed to pay to process such records, provided that each commercial firm has first signed an individual agreement with the library, or OCLC has advised the library that the commercial firm has signed a general agreement with OCLC, in either case containing measures agreed upon by OCLC and the commercial firm for protection of the records it has been employed to process. In addition, each member and nonmember library may make any other transfers of records to commercial firms, subject to prior written agreements with OCLC. However, there is no requirement for prior written agreements (a) for transfers made under Guideline 1 above to libraries operated by commercial firms or (b) for transfers to commercial firms by former OCLC member libraries of records of their holdings, so long as the libraries maintain no continuing user status with OCLC.
4. When a nonmember organization makes bibliographic information available to OCLC which is subject to usage or transfer restrictions imposed by such nonmember organization, and OCLC nevertheless elects to accept the information for addition to the OCLC database, OCLC will notify libraries to which it makes the information available, and rights to use and transfer records based on such information will be subject to the same restrictions.
5. When transfers under Guideline 1 above are made to machine-readable union catalogs accessible by nonmember libraries, it is requested that machine-readable copies of the records of such union catalogs be submitted to OCLC. OCLC, at its own expense, will have the right to add such records to its database for all uses consistent with its chartered purposes.
6. The Guidelines above apply to all uses and transfers of records except where a mutually acceptable agreement establishing broader or narrower rights is made with OCLC relating to a specific product or service.

II. DEFINITIONS

1. The term "member library" means a general member of OCLC as defined in its Code of Regulations.
2. The term "nonmember library" means any library other than a member library.
3. A "member network" is an OCLC-affiliated regional, state or multi-state library network organization which is in contract with OCLC to provide OCLC services and products, or to assist OCLC to provide such services and products, to general members of OCLC.
4. A "commercial firm" is any organization permitted, under applicable law, to operate on a for-profit basis.
5. The term "records" means bibliographic records and holdings data (including copies thereof) derived from the OCLC database, including derivative works made from such records, and either received in machine-readable form or converted by the transferee into machine-readable form. The term also includes such records when held only in eye-readable form, in the case of proposed transfers to commercial firms. However, records do not include, as to any member or nonmember library (a) bibliographic records designated in the OCLC database as original cataloging by such member or nonmember library and (b) bibliographic records derived by such member or nonmember library from sources other than the OCLC database and to copies of which in the OCLC database its holdings symbol has been attached by tapeloading. Such excluded records are freely transferable and are not dealt with in these Guidelines. OCLC-derived records held only in eye-readable form are freely transferable except to commercial firms.
6. The terms "transfer" and "transfer of records" refer to all sales, exchanges, gifts, sharing and other transfers, and all online access except online access provided to end-user patrons of a library in authorized possession of the records.

